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ABSTRACT

Assembled in this compilation are the President's Message on the Environment and specific information on the President's 1972 environmental proposals. The information includes bills submitted to the Congress, together with letters of transmittal and section-by-section analyses; Executive Orders; and a brief description of other initiatives that are not incorporated in formal documents or for which such documents are being prepared. Proposals cover the following areas: toxic waste disposal and sediment control, sulfur oxides emission charge, recycling wastes, integrated pest management, a national land use policy, tax incentives to preserve coastal wetlands, management of public lands, predator control, endangered species, Big Cypress National Fresh Water Reserve, Golden Gate National Recreation Area, conversion of federal properties to parks, preservation of wilderness areas, off-road vehicles, United Nations Fund for the Environment, and marine pollution. Summary statements indicate that active participation by informed citizens is essential to the establishment of needed institutions and mechanisms for protecting the environment. (BL)

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the president's 1972 environmental program

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foreword

For your convenience, we have assembled the President's Message on the Environment and specific information on the President's 1972 proposals. As in *The President's 1971 Environmental Program*, this information includes bills submitted to the Congress, together with letters of transmittal and section-by-section analyses; Executive Orders; and a brief description of other initiatives that are not incorporated in formal documents or for which such documents are being prepared. We hope that these materials will be helpful to you in more fully understanding the problems of our environment and the President's proposals for their solution. Active participation by informed citizens is essential to the establishment of needed institutions and mechanisms for protecting the environment.

Russell E. Train, Chairman
Robert Cahn
Gordon J. MacDonald

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I

the president's message on the environment

february 8, 1972

To the Congress of the United States:

From the very first, the American spirit has been one of self-reliance and confident action. Always we have been a people to say with Henley "I am the master of my fate . . . the captain of my soul"—a people sure that man commands his own destiny. What has dawned dramatically upon us in recent years, though, is a new recognition that to a significant extent man commands as well the very destiny of this planet where he lives, and the destiny of all life upon it. We have even begun to see that these destinies are not many and separate at all—that in fact they are indivisibly one.

This is the environmental awakening. It marks a new sensitivity of the American spirit and a new maturity of American public life. It is working a revolution in values, as commitment to responsible partnership with nature replaces cavalier assumptions that we can play God with our surroundings and survive. It is leading to broad reforms in action, as individuals, corporations, government, and civic groups mobilize to conserve resources, to control pollution, to anticipate and prevent emerging environmental problems, to manage the land more wisely, and to preserve wildness.

In messages to the Congress during 1970 and 1971 I proposed comprehensive initiatives reflecting the earliest and most visible concerns of the environmental awakening. The new cast of the public mind had to be translated into new legislation. New insights had to have new governmental forms and processes through which to operate. Broadly-based problems—such as air pollution, water pollution and pesticide hazards—had to be dealt with first.

The necessary first steps in each of these areas have now been taken though in all of them the work is far from completed. Now, as we press on with that work in 1972, we must also come to grips with the basic factors which underlie our more obvious environmental problems—factors like the use of land and the impact of incentives or disincentives built into our economic system. We are gaining an increasingly sophisticated understanding of the way economic, institutional, and legal forces shape our surroundings for good or ill; the next step is learning how to turn such forces to environmental benefit.

Primary responsibility for the actions that are needed to protect and enhance our environment rests with State and local government, consumers, industry, and private organizations of various kinds—but the Federal Government must provide leadership. On the first day of this decade I stated that "it is literally now or never" for true quality of life in America. Amid much encouraging evidence that it can and will be "now," we must not slacken our pace but accelerate it. Environmental concern must crystallize into permanent patterns of thought and action.

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What began as environmental awakening must mature finally into a new and higher environmental way of life. If we flag in our dedication and will, the problems themselves will not go away. Toward keeping the momentum of awareness and action, I pledge my full support and that of this Administration, and I urgently solicit the continuing cooperation of the Congress and the American people.

TWO YEARS' AGENDA

From Consideration to Action

In my 1971 environmental message, just one year ago today, I sent to the Congress a comprehensive program designed to clean up the problems of the past, and to deal with emerging problems before they become critical. These proposals included:

Regulation of toxic substances

Compresensive improvement in pesticide control authority

Noise control

Preservation of historic buildings

Power plant siting

Regulation of environmental effects of surface and underground mining

Ocean dumping regulation

More effective control of water pollution through a greatly expanded waste treatment grant program and strengthened standard-setting and enforcement authorities

A National Land Use Policy Act

Substantial expansion of the wilderness system

Expanded international cooperation

To date, most of the legislation on this list has been the subject of congressional hearings; most of it has attracted heartening interest and support; but none of it has yet received final congressional action. Last year was, quite properly, a year of consideration of these measures by the Congress. I urge, however, that this be a year of action on all of them, so that we can move on from intention to accomplishment in the important needs they address. Passage of these measures and creation of the unified Department of Natural Resources which I also proposed in 1971—by this 92nd Congress—will be essential if we are to have an adequate base for improving environmental quality.

Building on the Base

As that base is being established, we must move ahead to build wisely and rapidly upon it. I shall outline today a plan for doing that, with initiatives and actions in the following areas:

—Tightening pollution control
  A Toxic Wastes Disposal Control Act
  Legislation to control sediment from construction activities
  An emissions charge to reduce sulfur oxide air pollution
  Clean energy research and energy conservation measures
—Making technology an environmental ally
  Integrated pest management
  Stepped-up research on noise control
  Stepped-up research on air pollution effects and measurement
—Improving land use
  Expansion and strengthening of the National Land Use Policy Act
  Protection of wetlands
—Protecting our natural heritage
  A ban on use of poisons for predator control on public lands
  A stronger law to protect endangered species of wildlife
  Big Cypress National Fresh Water Reserve
  National Recreation Areas around New York Harbor and the Golden Gate
  Conversion of 20 additional Federal properties to recreational use
  18 new Wilderness Areas
  Regulation of off-road vehicles on Federal lands
—Expanding international cooperation on the environment
  Establishment of a United Nations Fund for the Environment
  Further measures to control marine pollution
—Protecting children from lead-based paint
—Enlisting the young
  President's Environmental Merit Awards Program for high schools
  Youth opportunities in the Department of Agriculture Field Scout program.

TIGHTENING POLLUTION CONTROL

The legislative framework for dealing with our major air pollution problems has become law, and I have made comprehensive recommendations regarding water pollution control. But several problems remain to be addressed which are difficult to deal with under the general pollution control authorities.

DISPOSAL OF TOXIC WASTES

Increasingly strict air and water pollution control laws and their more effective enforcement have led to greater reliance on land—both surface and underground—for disposal of waste products from the toxic substances being used in ever greater volume and variety in our society. Without adequate controls, such waste disposal may cause contamination of underground and surface waters leading to direct health hazards.

—I propose a Toxic Wastes Disposal Control Act, under which the Environmental Protection Agency would establish Federal guidelines and requirements for State programs to regulate disposal on or under the land of those toxic wastes which pose a hazard to health. The act would provide for Federal enforcement action if a State should fail to establish its own program.

SEDIMENT CONTROL

Sediment, small particles of soil which enter the water, is the most pervasive water pollution problem which does not come primarily from municipal or industrial sources. Heavy loads of sediment interfere with many beneficial uses of water, such as swimming and water supply, and can change the entire character of an aquatic environment. Many of our great waterways are afflicted with this problem. In our urban areas, a significant amount of sediment comes from construction. However, if proper construction practices are followed, sediment runoff from this source can be greatly reduced.

—I propose legislation calling upon the States to establish, through appropriate local and regional agencies, regulatory programs to control sediment affecting water quality from earth-moving activities such as building and road construction.

The Environmental Protection Agency, together with other Federal agencies, would develop Federal guidelines for appropriate control measures. Federal enforcement would take place in situations where a State failed to implement such a program.

SULFUR OXIDES EMISSIONS CHARGE

In my 1971 Environmental Message, I announced plans to ask for imposition of a charge on sulfur oxides emissions, one of the air pollutants most damaging to human health and property, and vegetation. The Council on Environmental Quality, the Treasury Department and the Environmental Protection Agency have now completed their studies on this measure and have developed the details of an emission charge proposal.

—I propose a charge on sulfur emitted into the atmosphere from combustion, refining, smelting and other processes.

This charge would begin in 1976 and apply in all regions where the air quality does not meet national standards for sulfur oxides during 1975. The charge would be 15¢ per pound on sulfur emitted in regions where the primary standards—which are designed to be protective of public health—have not been met within the deadline for achievement prescribed in the Clean Air Act. In regions where air quality met the primary standard but exceeded the secondary national standard—designed to protect property, vegetation, and aesthetic values—a charge of $.10 per pound of sulfur emitted would apply. Areas which reduce emissions sufficiently to meet both primary and secondary air quality standards would be exempt from the emission charge.

This charge is an application of the principle that the costs of pollution should be included in the price of the product. Combined with our existing regulatory authority, it would constitute a strong economic incentive to achieve the sulfur oxides standards necessary to protect health, and then further to reduce emissions to levels which protect welfare and aesthetics.

CLEAN ENERGY GENERATION AND CONSERVATION

Ours is an energy-based economy, and energy resources are the basis for future economic progress. Yet the consumption of energy-producing fuels contributes to many of our most serious pollution problems. In order to have both environmental quality and an improving standard of living, we will need to develop new clean energy sources and to learn to use energy more efficiently.

Our success in meeting energy needs while preventing adverse environmental effects from energy generation and transmission will depend heavily on the state of available technology. In my message to the Congress on energy of last June, I announced a series of steps to increase research on clean and efficient energy production. But further action is needed.

—As part of my new commitment to augment Federal research and development and target it more effectively on solving domestic problems, I have requested in the 1973 budget an additional $88 million for development of a broad spectrum of new technologies for producing clean energy.

In addition to carrying forward the priority efforts I have already announced—the liquid metal fast breeder reactor, pipeline quality gas from coal, and sulfur oxide control technology—the budget provides funds for new or increased efforts on fusion power, solar energy, magnetohydrodynamics, industrial gas from coal, dry cooling towers for power plant waste heat, large energy storage batteries and advanced underground electric transmission lines. These new efforts relate to both our immediate and our future energy problems, and are needed to assure adequate supplies of clean energy.

My message on energy also announced several steps that would be taken by the Federal Government to use energy more efficiently and with less environmental harm. One of these steps was issuance by the Secretary of Housing and Urban Development of revised standards for insulation in new federally insured houses. The new standards for single-family structures, which have now been issued through the Federal Housing Administration, reduce the maximum permissible heat loss by about one-third for a typical home. The fuel savings which will result from the application of these new standards will, in an average climate, exceed in one year the cost of the addititonal insulation required.

—I am now directing the Secretary of Housing and Urban Development to issue revised insulation standards for apartments and other multifamily structures not covered by the earlier revision. The new rules will cut maximum permissible heat loss by 40%.

The savings in fuel costs after a 5-year period will on the average more than offset the additional construction costs occasioned by these revised standards.

These stricter insulation standards are only one example of administrative actions which can be taken by the Federal Government to eliminate wasteful use of energy. The Federal Government can and must provide leadership by finding and implementing additional ways of reducing such waste.

—I have therefore instructed the Council on Environmental Quality and the Office of Science and Technology, working with other Federal agencies, to conduct a survey to determine what additional actions might be taken to conserve energy in Federal activities.

This survey will look at innovative ways to reduce wasteful consumption of energy while also reducing total costs and undesirable environmental impact.

RECYCLING

Recycling—the technique which treats many types of solid wastes not as pollutants but as recoverable and reusable "resources out of place"—is an important part of the answer to the Nation's solid waste burden. Last year, at my direction, the General Services Administration began reorienting government procurement policies to set a strong Federal example in the use of recycled products.

—Because Federal tax policy should also offer recycling incentives, the Treasury Department is clarifying the availability of tax exempt treatment industrial revenue bond financing for the construction of recycling facilities built by private concerns to recycle their own wastes.

THE ENVIRONMENTAL TRANSITION

Many environmental problems are influenced by the way our economy operates. Conversely, efforts to improve environmental quality have an impact on the economy. Our national income accounting does not explicitly recognize the cost of pollution damages to health, materials, and aesthetics in the computation of our economic wellbeing. Many goods and services fail to bear the full costs of the damages they cause from pollution, and hence are underpriced.

Environmental quality requirements will affect many of our industries by imposing new costs on production. We know that these impacts fall unevenly on industries, new and old firms, and on communities, but little concrete data has been available. Contract studies have recently been performed for the Council on Environmental Quality, the Environmental Protection Agency, and the Department of Commerce, under the policy guidance of the Council of Economic Advisers. These initial studies suggest that pollution control costs will result in some price increases, competitive trade disadvantages, and employment shifts. The major impact of these costs will be on older, and usually smaller plants.

As long as we carefully set our environmental goals to assure that the benefits we achieve are greater than the social and economic costs, the changes which will occur in our economy are desirable, and we as a nation will benefit from them.

MAKING TECHNOLOGY AN ENVIRONMENTAL ALLY

The time has come to increase the technological resources allocated to the challenges of meeting high-priority domestic needs. In my State of the Union Message last month, I announced an expanded Federal research and development commitment for this purpose. There is great potential for achievement through technology in the fight against pollution and the larger drive for quality in our environment.

The temptation to cast technology in the role of ecological villain must be resisted—for to do so is to deprive ourselves of a vital tool available for enhancing environmental quality. As Peter Drucker has said, "the environment is a problem of [the] success" of technological society, by no means a proof of its failure. The difficulties which some applications of technology have engendered might indeed be rectified by turning our backs on the 20th century, but only at a price in privation which we do not want to pay and do not have to pay. There is no need to throw out the baby with the bath water. Technology can and must be wisely applied so that it becomes environmentally self-corrective. This is the standard for which we must aim.

INTEGRATED PEST MANAGEMENT

Chemical pesticides are a familiar example of a technological innovation which has provided important benefits to man but which has also produced unintended and unanticipated harm. New technologies of integrated pest management must be developed so that agricultural and forest productivity can be maintained together with, rather than at the expense of, environmental quality. Integrated pest management means judicious use of selective chemical pesticides in combination with nonchemical agents and methods. It seeks to maximize reliance on such natural pest population controls as predators, sterilization, and pest diseases. The following actions are being taken:

—I have directed the Department of Agriculture, the National Science Foundation, and the Environmental Protection Agency to launch a large-scale integrated pest

management research and development program. This program will be conducted by a number of our leading universities.

—I have directed the Department of Agriculture to increase field testing of promising new methods of pest detection and control. Also, other existing Federal pesticide application programs will be examined for the purpose of incorporating new pest management techniques.

—I have directed the Departments of Agriculture and of Health, Education, and Welfare to encourage the development of training and certification programs at appropriate academic institutions in order to provide the large number of crop protection specialists that will be needed as integrated pest management becomes more fully utilized.

—I have authorized the Department of Agriculture to expand its crop field scout demonstration program to cover nearly four million acres under agricultural production by the upcoming growing season.

Through this program many unnecessary pesticide applications can be eliminated, since the scouts will be used to determine when pesticide applications are actually needed.

In my message on the environment last February, I proposed a comprehensive revision of our pesticide control laws—a revision which still awaits final congressional action. Also essential to a sound national pesticide policy are measures to ensure that agricultural workers are protected from adverse exposures to these chemicals.

—I am directing the Departments of Labor and Health, Education, and Welfare to develop standards under the Occupational Safety and Health Act to protect such workers from pesticide poisoning.

NOISE CONTROL RESEARCH

Scientific findings increasingly confirm what few urban dwellers or industrial workers need to be told—that excessive noise can constitute a significant threat to human well-being. The Congress already has before it a comprehensive noise control bill, which I proposed a year ago. A quieter environment cannot simply be legislated into being. We shall also need to develop better methods to achieve our goal.

—I have requested in my 1973 budget a $23 million increase in research and development funds for reducing noise from airplanes. I have also requested new funds for research and development for reducing street traffic noise.

RESEARCH ON AIR POLLUTION EFFECTS AND MEASUREMENT

Our pollution control efforts are based largely on the establishment of enforceable standards of environmental quality. Initial standards have often been based on incomplete knowledge because the necessary information has not been available. Also, the lack of adequate instruments to measure pollution and of models of how pollutants are dispersed has made it difficult to know exactly how much pollution must be controlled in a particular area. We need added research and development to make more precise judgments of what standards should be set and how we can most practically achieve our goals.

—I have requested in my 1973 budget an additional $12 million to increase research on the health effects of air pollution, on regional air pollution modeling, and on improved pollution instrumentation and measurement.

Improving Land Use

In recent years we have come to view our land as a limited and irreplaceable resource. No longer do we imagine that there will always be more of it over the horizon—more woodlands and shorelands and wetlands—if we neglect or overdevelop the land in view. A new maturity is giving rise to a land ethic which recognizes that improper land use affects the public interest and limits the choices that we and our descendants will have.

Now we must equip our institutions to carry out the responsibility implicit in this new outlook. We must create the administrative and regulatory mechanisms necessary to assure wise land use and to stop haphazard, wasteful, or environmentally damaging development. Some States are moving ahead on their own to develop stronger land-use institutions and controls. Federal programs can and should reinforce this encouraging trend.

NATIONAL LAND USE POLICY ACT

The National Land Use Policy Act, which I proposed to the Congress last year, would provide Federal assistance to encourage the States, in cooperation with local governments, to protect lands which are of critical environmental concern and to control major development. While not yet enacted, this measure has been the subject of much useful debate.

—I propose amendments to this pending National Land Use Policy legislation which would require States to control the siting of major transportation facilities, and impose sanctions on any State which does not establish an adequate land use program.

Under these amendments, the State programs established pursuant to the act would not only have to embody methods for controlling land use *around* key growth-inducing developments such as highways, airports, and recreational facilities; the States would also have to provide controls over the actual *siting* of the major highways and airports themselves. The change recognizes the fact that these initial siting decisions, once made, can often trigger runaway growth and adverse environmental effects.

The amendments would further provide that any State that had not established an acceptable land use program by 1975 would be subject to annual reductions of certain Federal funds. Seven percent of the funds allocated under sections of the Airport and Airways Development Act, the

Federal-Aid Highway Acts including the Highway Trust Fund, and the Land and Water Conservation Fund, would be withheld in the first year. An additional 7 percent would be withheld for each additional year that a State was without an approved land use program. Money thus withheld from noncomplying States would be allocated among States which did have acceptable programs.

These strong new amendments are necessary in view of the significant effect that Federal programs, particularly transportation programs, have upon land use decisions.

PROTECTION OF WETLANDS

The Nation's coastal and estuarine wetlands are vital to the survival of a wide variety of fish and wildlife; they have an important function in controlling floods and tidal forces; and they contain some of the most beautiful areas left on this continent. These same lands, however, are often some of the most sought-after for development. As a consequence, wetland acreage has been declining as more and more areas are drained and filled for residential, commercial, and industrial projects.

My National Land Use Policy Act would direct State attention to these important areas by defining wetlands among the "environmentally critical areas" which it singles out for special protection, and by giving priority attention to the coastal zones. I propose to supplement these safeguards with new economic disincentives to further discourage unnecessary wetlands development.

—I propose legislation to limit applicability of certain Federal tax benefits when development occurs in coastal wetlands.

MANAGEMENT OF PUBLIC LANDS

During 1971, I acted to strengthen the environmental requirements relating to management and use of the Nation's vast acreage of federally-owned public lands administered by the Department of the Interior. I proposed new legislation to establish an overall management policy for these public lands, something which we have been without for far too long. This legislation, still pending before the Congress, would direct the Secretary of the Interior to manage our public lands in a manner that would protect their environmental quality for present and future generations. The policy which it would establish declares the retention of the public lands to be in the national interest except where disposal of particular tracts would lead to a significant improvement in their management, or where the disposal would serve important public objectives which cannot be achieved on non-public lands.

PROTECTING OUR NATURAL HERITAGE

Wild places and wild things constitute a treasure to be cherished and protected for all time. The pleasure and refreshment which they give man confirm their value to society. More importantly perhaps, the wonder, beauty, and elemental force in which the least of them share suggest a higher right to exist—not granted them by man and not his to take away. In environmental policy as anywhere else we cannot deal in absolutes. Yet we can at least give considerations like these more relative weight in the seventies, and become a more civilized people in a healthier land because of it.

PREDATOR CONTROL

Americans today set high value on the preservation of wildlife. The old notion that "the only good predator is a dead one" is no longer acceptable as we understand that even the animals and birds which sometimes prey on domesticated animals have their own value in maintaining the balance of nature.

The widespread use of highly toxic poisons to kill coyotes and other predatory animals and birds is a practice which has been a source of increasing concern to the American public and to the federal officials responsible for the public lands.

Last year the Council on Environmental Quality and the Department of the Interior appointed an Advisory Committee on Predator Control to study the entire question of predator and related animal control activities. The Committee found that persistent poisons have been applied to range and forest lands without adequate knowledge of their effects on the ecology or their utility in preventing losses to livestock. The large-scale use of poisons for control of predators and field rodents has resulted in unintended losses of other animals and in other harmful effects on natural ecosystems. The Committee concluded that necessary control of coyotes and other predators can be accomplished by methods other than poisons.

Certainly, predators can represent a threat to sheep and some other domesticated animals. But we must use more selective methods of control that will preserve ecological values while continuing to protect livestock.

—I am today issuing an Executive Order barring the use of poisons for predator control on all public lands. (Exceptions will be made only for emergency situations.) I also propose legislation to shift the emphasis of the current direct Federal predator control program to one of research and technical and financial assistance to the States to help them control predator populations by means other than poisons.

ENDANGERED SPECIES

It has only been in recent years that efforts have been undertaken to list and protect those species of animals whose continued existence is in jeopardy. Starting with our national symbol, the bald eagle, we have expanded our concern over the extinction of these animals to include the present list of over 100. We have already found, however, that even the most recent act to protect endangered species, which dates only from 1969, simply does not provide the kind of management tools needed to act early enough to save a vanishing species. In particular, existing laws do not generally allow the Federal Government to control shooting, trapping, or other taking of endangered species.

—I propose legislation to provide for early identification and protection of endangered species. My new proposal would make the taking of endangered species a Federal offense for the first time, and would permit protective measures to be undertaken before a species is so depleted that regeneration is difficult or impossible.

MIGRATORY SPECIES

The protection of migratory species, besides preserving wildlife values, exemplifies cooperative environmental effort among the United States, Canada, and Mexico. By treaties entered into among these three countries, migratory species are protected. New species may be added by common agreement between the United States and Mexico.

—I have authorized the Secretary of State, in conjunction with the Secretary of the Interior, to seek the agreement of the Mexican Government to add 33 new families of birds to the protected list.

Included in the proposal are eagles, hawks, falcons, owls, and many of the most attractive species of wading birds. I am hopeful that treaty protection can be accorded them in the near future.

BIG CYPRESS NATIONAL FRESH WATER RESERVE

After careful review of the environmental significance of the Big Cypress Swamp in Florida, particularly of the need for water from this source to maintain the unique ecology of Everglades National Park, I directed the Secretary of the Interior to prepare legislation to create the Big Cypress National Fresh Water Reserve. This legislation, which has now been submitted to the Congress, will empower the Federal Government to acquire the requisite legal interest in 547,000 acres of Big Cypress.

NEW PARKLANDS AT THE GATEWAYS

The need to provide breathing space and recreational opportunities in our major urban centers is a major concern of this Administration. Two of the Nation's major gateways to the world—New York City and San Francisco—have land nearby with exceptional scenic and recreational potential, and we are moving to make that land available for people to enjoy. In May of 1971, I proposed legislation to authorize a Gateway National Recreation Area in New York and New Jersey. This proposal would open to a metropolitan region of more than 14 million people a National Recreation Area offering more than 23,000 acres of prime beaches, wildlife preserves, and historical attractions including the nation's oldest operating lighthouse.

On our western shore lies another area uniquely appropriate for making recreational and scenic values more accessible to a metropolitan community.

—I propose legislation to establish a Golden Gate National Recreation Area in and around San Francisco Bay.

This proposal would encompass a number of existing parks, military reservations, and private lands to provide a full range of recreation experiences. Altogether, the area would encompass some 24,000 acres of fine beaches, rugged coasts, and readily accessible urban parklands, extending approximately 30 miles along some of America's most beautiful coastline north and south of Golden Gate Bridge. Angel and Alcatraz Islands in the bay would be within the boundaries of the National Recreation Area, as would a number of properties on the mainland which afford magnificent views of the city, the bay and the ocean. As part of this plan, I am directing that the Presidio at San Francisco be opened for dual military and civilian recreational uses.

CONVERTING FEDERAL PROPERTIES TO PARKS

Among the most important legacies that we can pass on to future generations is an endowment of parklands and recreational areas that will enrich leisure opportunities and make the beauties of the earth and sea accessible to all Americans. This is the object of our Legacy of Parks program, initiated early in 1971. As part of this program, I directed the Property Review Board to give priority to potential park and recreation areas in its search for alternative uses of federally held real property. The results of this search so far have been most encouraging. To the original 40 properties which I announced in my Environmental Message of 1971 as being well suited for park use, another 111 prospects have been added. And from this total of 151 prospective parklands, 63 have already been made available.

—Today I am pleased to announce that 20 more parcels of Federal land are being made available for park and recreation use.

These newest parcels, combined with those which have been announced over the past year, provide a legacy of 83 parklands for America which comprise 14,585 acres in 31 States and Puerto Rico. The estimated fair market value of these properties is over $56 million. In the months to come, every effort will be made to extend this legacy to all 50 States. The green spaces and natural retreats that we tend to take for granted will not be available for future enjoyment unless we act now to develop and protect them.

WILDERNESS AREAS

One of the first environmental goals I set when I took office was to stimulate the program to identify and recommend to the Congress new wilderness areas. Although this program was behind schedule at that time, I am now able to report that the September, 1974 statutory deadline for reviews can and will be met.

The Wilderness Act of 1964 set aside 54 areas, consisting of about 9.1 million acres, as the nucleus of our wilderness system. Since then, 33 new areas totalling almost 1.2 million acres within National Forests, National Parks, and National Wildlife Refuges have been added to the system. Thirty-one areas totalling about 3.6 million acres, including 18 areas submitted by this Administration, have been proposed to the Congress but have yet to be acted upon. One of the most significant elements of this process has been the active participation by the public in all of its phases. At public wilderness hearings held all across the country, fair consideration has been given to all interests and points of view, with constructive citizen involvement in the decision-making process.

—I am today proposing 18 new wilderness areas which, when approved, will add another 1.3 million acres to the wilderness system.

Eight of these proposals are within the National Forests, four are within National Park areas, and six are in National Wildlife Refuges.

Of these areas, 1.2 million acres would be in the following National Forests: Blue Range National Forest, Arizona and New Mexico; Agua Tibia and Emigrant National Forests, California; Eagles Nest and Weminuche National Forests, Colorado; Mission Mountains National Forest, Montana; Aldo Leopold National Forest, New Mexico; and Glacier National Forest, Wyoming.

A total of 40,000 acres would be in our National Park system in the following locations: Black Canyon of the Gunnison National Monument, Colorado; Bryce Canyon National Park, Utah; Chiricahua National Monument, Arizona; Colorado National Monument, Colorado.

Finally, a total of 87,000 acres would be in areas administered by the Fish and Wildlife Services of the Department of the Interior in the following locations: St. Marks, National Wildlife Refuge, Florida; Wolf Island, National Wildlife Refuge, Georgia; Moosehorn National Wildlife Refuge, Maine; San Juan Islands, National Wildlife Refuge, Washington; Cape Romain, National Wildlife Refuge, South Carolina; and Bosque del Apache, National Wildlife Refuge, New Mexico.

The year 1972 can bring some of the greatest accomplishment in wilderness preservation since passage of the Wilderness Act in 1964. I urge prompt and systematic consideration by the Congress of these 18 new proposals and of the 31 currently pending before it. Approval of all 49 additions would bring the system up to a total of over 15 million acres.

Unfortunately, few of these wilderness areas are within easy access of the most populous areas of the United States. The major purpose of my Legacy of Parks program is to bring recreation opportunities closer to the people, and while wilderness is only one such opportunity, it is a very important one. A few of the areas proposed today or previously are in the eastern sections of the country, but the great majority of wilderness areas are found in the West. This of course is where most of our pristine wild areas are. But a greater effort can still be made to see that wilderness recreation values are preserved to the maximum extent possible, in the regions where most of our people live.

—I am therefore directing the Secretaries of Agriculture and the Interior to accelerate the identification of areas in the Eastern United States having wilderness potential.

OFF-ROAD VEHICLES

A recent study by the Department of the Interior estimated that Americans own more than 5 million off-road recreational vehicles—motorcycles, minibikes, trail bikes, snowmobiles, dune-buggies, all-terrain vehicles, and others. The use of these vehicles is dramatically on the increase: data show a three-fold growth between 1967 and 1971 alone.

As the number of off-road vehicles has increased, so has their use on public lands. Too often the land has suffered as a result. Increasingly, Federal recreational lands have become the focus of conflict between the newer motorized recreationist and the traditional hiker, camper, and horseback rider. In the past, Federal land-management agencies have used widely varying approaches to dealing with this conflict. The time has come for a unified Federal policy toward use of off-road vehicles on Federal lands.

—I have today signed an Executive Order directing the Secretaries of Agriculture, Interior, Army and the Board of Directors of the Tennessee Valley Authority to develop regulations providing for control over the use of off-road vehicles on Federal lands.

They will designate areas of use and non-use, specify operating conditions that will be necessary to minimize damage to the natural resources of the Federal lands, and ensure compatibility with other recreational uses, taking into account noise and other factors.

EXPANDING INTERNATIONAL COOPERATION ON THE ENVIRONMENT

We are now growing accustomed to the view of our planet as seen from space—a blue and brown disk shrouded in white patches of clouds. But we do not ponder often enough the striking lesson it teaches about the global reach of environmental imperatives. No matter what else divides men and nations, this perspective should unite them. We must work harder to foster such world environmental consciousness and shared purpose.

UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT

To cope with environmental questions that are truly international, we and other nations look to the first world conference of governments ever convened on this subject:

the United Nations Conference on the Human Environment, to be held in Stockholm, Sweden, in June of this year. This should be a seminal event of the international community's attempt to cope with these serious, shared problems of global concern that transcend political differences.

But efforts to improve the global environment cannot go forward without the means to act.

—To help provide such means, I propose that a voluntary United Nations Fund for the Environment be established, with an initial funding goal of $100 million for the first 5 years.

This Fund would help to stimulate international cooperation on environmental problems by supporting a centralized coordination point for United Nations activities in this field. It would also help to bring new resources to bear on the increasing number of worldwide problems through activities such as monitoring and cleanup of the oceans and atmosphere.

—If such a Fund is established, I will recommend to the Congress that the United States commit itself to provide its fair share of the Fund on a matching basis over the first 5 years.

This level of support would provide start-up assistance under mutually agreed-upon terms. As these programs get underway, it may well be that the member nations will decide that additional resources are required. I invite other nations to join with us in this commitment to meaningful action.

CONTROL OF MARINE POLLUTION

Ocean pollution is clearly one of our major international environmental problems. I am gratified that in the past year the Congress has taken several steps to reduce the risks of oil spills on the high seas. However, further congressional action is needed to ratify several pending international conventions and to adopt implementing legislation for the various oil-spill conventions which have been ratified or which are awaiting approval.

Action on these recommendations will complete the first round of international conventions to deal with marine pollution. We have taken initiatives in three international forums to develop a second and more sophisticated round of agreements in this area. We are preparing for a 1973 Intergovernmental Maritime Consultative Organization (IMCO) Conference to draft a convention barring intentional discharges to the sea of oil and hazardous substances from ships. In conjunction with the Law of the Sea Conference scheduled for 1973, we are examining measures to control the effects of developing undersea resources. And, in the preparatory work for the 1972 U.N. Conference on the Human Environment, progress has been made on an agreement to regulate the ocean dumping of shore-generated wastes, and further work in this area has been scheduled by IMCO. We hope to conclude conventions in each of these areas by 1973.

Protecting Children From Lead-Based Paint

To many Americans, "environment" means the city streets where they live and work. It is here that a localized but acutely dangerous type of "pollution" has appeared and stirred mounting public concern.

The victims are children: the hazard is lead-based paint. Such paint was applied to the walls of most dwellings prior to the 1950's. When the paint chips and peels from the walls in dilapidated housing, it is frequently eaten by small children. This sometimes results in lead poisoning which can cause permanent mental retardation and occasionally death. We can and must prevent unnecessary loss of life and health from this hazard, which particularly afflicts the poorest segments of our population.

To help meet the lead-paint threat, the Department of Health, Education, and Welfare will administer grants and technical assistance to initiate programs in over 50 communities to test children in high-risk areas for lead concentrations. In addition, these programs will support the development of community organization and public education to increase public awareness of this hazard. Other Federal agencies are also active in the effort to combat lead-based paint poisoning. ACTION and other volunteers will assist city governments to help alleviate lead paint hazards. The Department of Housing and Urban Development is engaged in research and other actions to detect and eliminate this hazard.

The resources of the private sector should also be utilized through local laws requiring owners of housing wherever possible to control lead paint hazards.

Enlisting the Young

The starting point of environmental quality is in the hearts and minds of the people. Unless the people have a deep commitment to the new values and a clear understanding of the new problems, all our laws and programs and spending will avail little. The young, quick to commit and used to learning, are gaining the changed outlook fastest of all. Their enthusiasm about the environment spreads with a healthy contagion: their energy in its behalf can be an impressive force for good.

Four youth participation programs of mutual benefit to the young and the Nation are now planned or underway:

Last October, I initiated the Environmental Merit Awards Program. This program, directed by the Environmental Protection Agency in cooperation with the U.S. Office of Education, awards national recognition to successful student projects leading to environmental understanding or improvement. Qualifications for the awards are determined by a local board consisting of secondary school students, faculty, and representatives of the local community. Already more than 2,000 high schools, representing all fifty States, have registered in the program.

The Department of Agriculture's expanded field scout demonstration program, designed to permit more effective pest control with less reliance on chemical pesticides, will employ thousands of high school and college students. These young people will be scouting cotton and tobacco pests in the coming growing season, and the program will be expanded to other crops in future years.

The Environmental Protection Agency has recently initiated in its Seattle regional office a pilot program using young people to assist the agency in many of its important tasks, including monitoring. EPA is working with State and local pollution control agencies to identify monitoring needs. ACTION and the youth training programs are providing the manpower. If this initial program proves successful, the concept will be expanded.

ACTION volunteers and young people employed through the Neighborhood Youth Corps, Job Corps, and college work-study programs will work with city governments to help alleviate lead paint hazards, gaining experience in community health work as they give urgently needed aid to inner-city families.

Young people working on environmental projects, learning the skills necessary for a particular job, must also understand how their work relates to the environmental process as a whole. Thus, all of these activities must be supplemented by continued improvement in many aspects of environmental education to help all of our citizens, both young and old, develop a better awareness of man's relation to his environment. In my first Environmental Quality Report, I stressed the importance of improving the Nation's "environmental literacy." This goal remains as important as ever, and our progress toward it must continue.

ONE DESTINY

Our destiny is one: this the environmental awakening has taught America in these first years of the seventies. Let us never forget, though, that it is not a destiny of fear, but of promise. As I stated last August in transmitting the Second Annual Report of the Council on Environmental Quality: "The work of environmental improvement is a task for all our people . . . The achievement of that goal will challenge the creativity of our science and technology, the enterprise and adaptability of our industry, the responsiveness and sense of balance of our political and legal institutions, and the resourcefulness and the capacity of this country to honor those human values upon which the quality of our national life must ultimately depend." We shall rise to the challenge of solving our environmental problems by enlisting the creative energy of all of our citizens in a cause truly worthy of the best that each can bring to it.

While we share our environmental problems with all the people of the world, our industrial might, which has made us the leader among nations in terms of material well-being, also gives us the responsibility of dealing with environmental problems first among the nations. We can be proud that our solutions and our performance will become the measure for others climbing the ladder of aspirations and difficulties; we can set our sights on a standard that will lift their expectations of what man can do.

The pursuit of environmental quality will require courage and patience. Problems that have been building over many years will not yield to facile solutions. But I do not doubt that Americans have the wit and the will to win—to fulfill our brightest vision of what the future can be.

RICHARD NIXON

The White House
February 8, 1972

II

the president's proposals

Toxic Waste Disposal and Sediment Control

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 8, 1972

OFFICE OF THE
ADMINISTRATOR

Dear Mr. [President/Speaker]:

In accordance with the President's 1972 Message to the Congress on the Environment, there is transmitted herewith a proposed bill containing The Sediment Control Act and The Toxic Waste Disposal Control Act, to be added as Title II and III of the Federal Water Pollution Control Act. They are being submitted together as the Federal Water Pollution Control Act Amendments of 1972. The proposed new Titles II and III are intended to strengthen the Act in areas we believe are inadequately covered under both the existing legislation and the extensive amendments of that legislation now pending before the Congress.

The proposed Title II, The Sediment Control Act, would supplement both the Federal Water Pollution Control Act, which does not deal specifically with sedimentation as a water quality problem although sediment is the major pollutant of waters by volume, and various authorities of the Department of Agriculture for technical and financial assistance to control sedimentation. The Act would provide for controls over non-agricultural land-disturbing activities, primarily building and road construction activities. The concentration of such activities in urban-suburban areas and their substantial per-acre yield of sediment often lead to particularly severe water quality problems.

The Act calls upon States to implement a regulatory program, including permits where appropriate, with respect to sedimentation arising from such land-disturbing activities in areas where they significantly affect water quality. Mining activities, sedimentation from which would be regulated under the President's proposed Mined Area Protection Act of 1971, are excluded from the Act, along with agricultural and silvicultural activities. Federal guidelines for State programs would be promulgated by the Environmental Protection Agency in consultation with the Secretaries of Housing and Urban Development, Agriculture, and Transportation, with other appropriate Federal agencies and with representatives of State and local governments. States would be given flexibility in assigning, presumably to counties or other local governmental units in most cases, the responsibility for administering the permit and general regulatory program. The bill encourages the use of existing regulatory mechanisms, such as building and grading permits, for providing the required sedimentation controls. Local components of the State's program would be subject to approval by the State water quality agency. Relevant Federal permit and assistance programs would be used to assist States in achieving compliance with approved programs. The Environmental Protection Agency would be authorized to promulgate appropriate regulations for application in States failing to implement approved programs and would be empowered to enforce State regulations where a State fails to do so.

The proposed Title III, The Toxic Waste Disposal Control Act, would provide for a nationwide program to regulate land and underground disposal of wastes toxic to human health.

As controls over disposal of toxic substances directly into surface waters are strengthened, the use of land or underground strata for such disposal can be expected to increase significantly, particularly with the enactment of needed controls over ocean disposal, which the President has proposed.

The program would be administered by the States except in cases of State failure to meet guidelines of the Environmental Protection Agency, in which event the Agency would issue necessary regulations. The proposed program would substitute for the present inadequate system of State regulation a more orderly, nationwide system that would retain the best in ongoing State programs under Federal guidelines.

Both the sediment and toxic waste disposal control provisions would substantially enhance the effectiveness of the Federal-State water pollution control program by providing a structured approach to two significant types of pollution. In addition, the toxic waste disposal control provisions would help to provide the controls over ground water contamination which the President recommended a year ago.

Although the proposed "Federal Water Pollution Control Act Amendments of 1972" are being recommended as amendments to the present law, we are of course aware of the extensive amendments to the law already pending in the Congress. Indeed, references in our bills to the Federal Water Pollution Control Act anticipate such widely agreed-upon and expected reforms of the Act as provision for effluent limitations, special standards for toxic pollutants, and strengthened Federal enforcement authority that is not limited to interstate pollution.

I would point out that S. 2770, which has passed the Senate, contains some general provisions for controls over construction-related sources of water pollution and for disposal of pollutants on or under the land. However, we believe that the more specific provisions contained in our proposed amendments would establish a more effective framework for action.

A similar letter is being sent to the [President of the Senate/Speaker of the House].

The Office of Management and Budget advises that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely,

/s/ William D. Ruckelshaus
Administrator

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

A BILL

THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972

To amend the Federal Water Pollution Control Act, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled that this Act may be cited as the Federal Water Pollution Control Act Amendments of 1972.

SECTION 1.

The Federal Water Pollution Control Act is amended by inserting before Section 1 of such Act the following: "Title I-Water Pollution Prevention and Control.

SECTION 2.

Such Act is further amended by adding after the aforesaid Title I, i.e., after Section 27 of such Act, the following new Title:

"TITLE II -- THE SEDIMENT CONTROL ACT

"SECTION 201. PURPOSE

It is the purpose of this Title to reduce sedimentation from land-disturbing activities consistent with applicable water quality standards.

"SECTION 202. DEFINITIONS

For the purposes of this Title --

"(a) the term "Administrator" means the Administrator of the Environmental Protection Agency;

"(b) the term "State" means a State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

"(c) the term "sedimentation" means the movement of soil, rock, and mineral or other related or similar matter, or particles thereof, into waters subject to the standard-setting and enforcement provisions of this Act.

"SECTION 203. GUIDELINES

"(a) Within one year after the enactment of this Title, the Administrator shall in accordance with 5 U.S.C. 553 et. seq. promulgate, and from time to time revise, guidelines for the effective control of sedimentation from land-disturbing activities, including, but not limited to clearing, grading, transporting, and filling of land in connection with (1) the construction of both public and private buildings, roads, and highways, and (2), other activities excepting (A) uses of land for agricultural, silvicultural, ranching or grazing purposes and (B) activities subject to regulation under the [proposed] Mined Area Protection Act [S. 993, H.R. 4704].

"(b) Such guidelines shall include generally applicable information concerning (1) demonstrably feasible techniques of sediment control, including information on related costs; (2) effects likely to result from failure to control sedimentation; (3) the extent of control achievable by the techniques described; and (4) procedures for evaluating the relative costs of attaining various levels of sedimentation control. Such guidelines shall also prescribe appropriate procedures to be followed by States in order to comply with this Title. Such guidelines shall, to the extent feasible and appropriate differentiate among various types of soils, size of the land area being disturbed, land use patterns, slopes, drainage conditions, rainfall patterns, proximate water bodies and their characteristics (including but not limited to turbidity), and other relevant factors. The guidelines shall prescribe categories of land-disturbing activities for which (A) permits are required, (B) general regulation is required, or (C) no regulation is required for the purposes of sedimentation control programs established pursuant to Section 204.

"(c) The Administrator shall consult on a continuing basis with the Secretaries of Housing and Urban Development, Agriculture, Commerce, Transportation, with the heads of other appropriate Federal agencies, and with appropriate representatives of State and local governments, in developing and revising such guidelines.

"SECTION 204. STATE PROGRAMS

"(a) Within one year after the enactment of this Title and from time to time subsequently, as appropriate, each State shall survey the waters within its jurisdiction and determine on the basis of applicable water quality standards, areas of critical sedimentation (1) resulting in substantial part from activities subject to regulation under this Title and (2) amenable to substantial attainment of such water quality standards through controls over the activities subject to regulation under this Title either alone or in conjunction with controls over other sources of sedimentation. Such surveys shall be conducted in consultation and cooperation with the Environmental Protection Agency, the Departments of Agriculture, Commerce, and the Interior, and other appropriate Federal agencies and shall be submitted to the Environmental Protection Agency.

"(b) Within one year after the initial promulgation of Federal guidelines under Section 203, each State shall submit to the Administrator for his approval a sedimentation control program for the non-Federal lands within its jurisdiction that contribute or are likely to contribute to the critical sedimentation problems identified through the survey described in subsection (a) of this Section. Such program shall be: (1) consistent with the guidelines promulgated pursuant to Section 203 and (2) meet the following criteria:

(A) In accordance with regulations to be promulgated by the Administrator pursuant to 5 U.S.C. 553 _et_. _seq_., land-disturbing activities other than those exempted from regulation by guidelines issued pursuant to Section 203(b) may be conducted only (1) in accordance with regulations adopted as part of or pursuant to an approved State program or (2) after the responsible individual or organization has submitted a sedimentation control plan to an agency designated pursuant to subsection (c) of this Section and has received a permit from that agency;

(B) Each sedimentation control plan shall be reviewed and evaluated by a qualified public agency prior to the issuance of any permit;

(C) Any State, local or regional agency which has a permit issuing program approved by the State agency responsible for establishing and enforcing water pollution control standards may be designated to issue permits under this title. To the extent possible, such permits should be issued (1) by agencies already engaged in related activities, or (2) as part of such other permits;

(D) Adequate provision is made for monitoring by an appropriate agency or agencies of activities requiring permits or otherwise regulated under this Title to ensure that they are conducted pursuant to and in compliance with applicable permits or regulations. The State water pollution control agency and such other State, local or regional agencies as the State may designate shall be empowered to enjoin activities conducted contrary to or in violation of this Title or permits issued pursuant thereto and to assess appropriate penalties for such violations.

"(c) Activities subject to this Title that are conducted on Federal lands shall be regulated, in accordance with the guidelines issued pursuant to Section 203, by the agency with jurisdiction over such land.

"SECTION 205. FEDERAL ENFORCEMENT

"(a) Federal agencies providing financial assistance for activities subject to this Title shall require the possession of any permit required by this Act as a condition of such assistance.

"(b) With respect to activities subject to this Title, the provisions of section 21(b) of this Act shall be construed as calling for a certification of reasonable assurance of compliance with the provisions of this Title.

"(c) The Administrator is authorized to enforce the requirements of State programs approved by him pursuant to this Title and regulations promulgated pursuant to subsection (d) of this Section in the same manner as he is authorized under Title I of this Act to enforce standards established pursuant to Title I of this Act.

"(d) With respect to any State in which after the expiration of 30 months following the date of enactment of this Title, there is no program approved pursuant to this Title or in which a program has been disapproved, in whole or in part, by the Administrator, the Administrator may adopt, in accordance with 5 U.S.C. 553 et. seq., such regulations consistent with the provisions of this Title and with the guidelines issued pursuant to Section 203 of the Act as may be required to control sedimentation resulting from activities covered by that section.

SECTION 3.

Such Act is further amended by adding after Title II thereof the following new Title:

"TITLE III -- THE TOXIC WASTE DISPOSAL CONTROL ACT

"SECTION 301(a). FINDINGS

The Congress finds --

"(1) that increasingly strict and pervasive regulatory controls over the disposal of wastes in the air, in surface waters, and in the oceans is causing intensified use of land and underground strata as repositories for wastes;

"(2) that such disposal of toxic wastes, if insufficiently controlled, may cause serious contamination of the Nation's underground and surface waters, including numerous interstate waters;

"(3) that knowledge of the behavior of wastes in the subsurface environment often is very limited; and

"(4) that the present controls exercised by the States over disposal of toxic wastes fail adequately to protect the public from human health hazards of such disposal.

"SECTION 301(b). PURPOSE

Therefore, it is the purpose of this Title -- to establish national requirements for the regulation of land and underground disposal of toxic wastes, relying principally on State controls pursuant to Federal guidelines.

"SECTION 302. DEFINITIONS

For the purposes of this Title --

"(a) the term "toxic waste" means any substance or combination of substances, which, in the judgment of the Administrator, may pose a substantial present or potential hazard to human health because such substances are nondegradable or persistent in nature, or because they can be biologically magnified, or because they can be lethal, or because they otherwise cause or tend to cause detrimental cumulative effects;

"(b) the term "disposal of toxic waste" means the discharge, deposit, or injection into subsurface strata or excavations or the ultimate disposition onto the land of any toxic waste, where, in the judgment of the Administrator, such actions could result in contamination of ground waters or surface waters, except for such disposal of toxic waste as is regulated under Title I of this Act or other Federal legislation;

"(c) the term "surface waters" means all interstate waters and navigable waters of the United States; the territorial sea; and the contiguous zone, as established by Article 24 of the Convention of the Territorial Sea and the Contiguous Zone, over which the United States has jurisdiction;

"(d) the term "Administrator" means the Administrator of the Environmental Protection Agency;

"(e) the term "Secretary" means the Secretary of the Interior;

"(f) the term "United States" means States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and those adjacent lands and strata under navigable waters, the territorial sea and the contiguous zone as established by Article 24 of the Convention of the Territorial Sea and the Contiguous Zone, over which the United States, any State of the United States, or the Commonwealth of Puerto Rico has jurisdiction;

"(g) the term "The State Agency" means the agency or agencies responsible within a State for regulating land and underground disposal of toxic wastes in accordance with this Title.

"SECTION 303. POLICY

The Congress hereby declares that it is the policy of the United States that the disposal of toxic wastes by any person or organization (including agencies and instrumentalities of the United States) in the United States shall be in accordance with the provisions of this Title and that such disposal of waste may be permitted, taking into account the feasibility and safety of alternative locations and methods of disposal, provided the State agency or where appropriate, the Administrator, has not determined pursuant to this Title that the proposed disposal will endanger the health of persons.

"SECTION 304. FEDERAL REGULATIONS AND GUIDELINES

"(a) The Administrator shall, after consultation with the Secretary and the heads of other appropriate Federal agencies and in accordance with 5 U.S.C. 553 et. seq., designate by regulation within one year after the date of enactment of this Title and from time to time thereafter (1) geographic areas and types of geologic formations or situations in which, because of substantial hazards to human health specified types of toxic wastes or combinations thereof may not be disposed of in any quantity or in excess of specified quantities; and (2) substances or classes, categories or quantities of such substances, that he determines to be toxic wastes for the purposes of this Title. In carrying out the provisions of this subsection, the Administrator shall consult with the Secretary of Health, Education, and Welfare with respect to the public health aspects of the Administrator's determinations.

"(b) For the purpose of advising States in adopting or revising regulations governing the disposal of toxic wastes, the Administrator shall, after consultation with the Secretary and heads of other appropriate Federal agencies and in accordance with 5 U.S.C. 553 et seq., promulgate by regulation within one year after the date of enactment of this Title and from time to time thereafter, guidelines for the regulation of disposal of toxic wastes. Such guidelines shall, on the basis of available scientific knowledge, include information and recommendations with respect to geological and hydrological testing requirements, disposal procedures, performance standards related to subsurface waste disposal facilities such as wells and well casings, distribution and proximity of disposal or storage sites in specified geographic areas and types of geologic formations or situations, and other reasonably related matters. Such guidelines shall also set forth monitoring and reporting requirements to be included in State programs and shall provide for regulation by permit with respect to types of toxic waste, disposal locations or procedures, or a combination thereof, for which the Administrator determines that advance review of plans and case-by-case specification of conditions are required in order to prevent substantial hazards to human health. For other types of toxic waste, disposal locations or procedures, or combinations thereof, the guidelines shall provide for controls through generally applicable regulations.

"SECTION 305. STATE PROGRAMS

"(a) Each State participating in the nationwide program established by this Title shall, after public hearings and within one year after the initial issuance of guidelines pursuant to Section 304, submit to the Administrator for review and approval or disapproval in accordance with this Section, a program to regulate disposal of toxic wastes on non-Federal lands within the State in accordance with the guidelines promulgated pursuant to Section 304. A State may at any time thereafter submit a program or revisions of a program to the Administrator for review and approval or disapproval in accordance with this Section.

"(b) The Administrator shall approve the program or revisions of such program submitted to him if, in consultation with the Secretaries of Commerce and the Interior, he determines that:

(1) For such types of disposal of toxic wastes as the Administrators may specify in his guidelines

pursuant to Section 304, the program requires that there be obtained from the State agency a permit (A) based on a plan describing the manner in which disposal will be conducted and (B) consistent with the regulations described in paragraph (2) of this subsection and with such other reasonably related conditions as may be specified by the State agency;

(2) The State agency has issued after public hearings such rules or regulations as may be required to comply with the regulations issued by the Administrator pursuant to Section 304;

(3) The State agency has authority substantially similar to that possessed by the Administrator under Section 309 of this Act;

(4) The State agrees to provide annual reports to the Administrator concerning the program and to furnish at such reasonable times as the Administrator may designate copies of such permits issued as the Administrator may request;

(5) The State agency has such regulatory and other authorities as may be necessary to carry out the purposes of this Title, including but not limited to the authority to levy fines and initiate prompt legal actions for violations of applicable laws, regulations, and permits;

(6) Sufficient funding and adequately trained manpower are or will be committed to the administration and enforcement of the program to achieve the goals of this Title; and

(7) The program meets such additional reasonably related and generally applicable criteria as the Administrator may by regulation establish.

"(c) As a further condition for approval by the Administrator, each State program must provide a satisfactory mechanism for promptly notifying each State the public health of which may be adversely affected by a toxic waste disposal activity for which a permit will be issued.

"(d) The Administrator may approve or disapprove in whole or in part any program or portion thereof submitted pursuant to this Title. In making such a determination, the Administrator shall consult with interested Federal agencies.

"(e) If after the Administrator has approved a

State program or revisions thereof, he determines that:

(1) The State has failed to implement the program adequately;

(2) The State's regulations require revision; or

(3) The State has otherwise failed to comply with the provisions or purposes of this Title; he shall notify the State and request appropriate action, remedies, or revisions to the regulations, affording the State an opportunity for a hearing. If within a reasaonble time, as determined by the Administrator, the State has not taken appropriate action as determined by the Administrator, the Administrator may withdraw in whole or in appropriate part his approval of the program and implement a program for such State under subsection (f) of this Section. After withdrawal of his approval and pending the implementation of a program under subsection (f), the Administrator may administer and enforce the State regulations and may re-examine and modify as he determines to be necessary to prevent substantial hazards to human health any permits issued by the State within 90 days prior to withdrawal of approval.

"(f) If, after the expiration of one year following the issuance of guidelines under Section 304, a State fails to submit a program to regulate the disposal of toxic wastes or has submitted a program which has been disapproved and within such period as has been set by the Administrator has failed to submit a revised program for approval, the Administrator shall, in accordance with the procedures set forth in subsection 304(b), issue regulations and establish a permit program for such State to the extent necessary to conform to the applicable requirements of subsection (b) and (c) of this Section.

"(g) Prior to approval of a State program pursuant to this Section, any person or organization desiring to engage in subsurface disposal of toxic wastes in a State that does not regulate such activity shall comply with such interim regulations as the Administrator may prescribe to prevent substantial hazards to human health.

"(h) Subsequent to taking action under subsections (c) or (f) of this subsection, the Administrator shall terminate such action and restore his approval of a State program whenever a State submits a program or revision thereof meeting the requirements of this Section.

"SECTION 306. ADMINISTRATIVE INSPECTIONS AND WARRANTS

"(a)(1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required by a State or where appropriate, the Administrator, to be kept or made under this Title and otherwise facilitating the carrying out of his functions under this Title, the Administrator is authorized, in accordance with this Section, to enter any premises in which or on which such documents are kept or toxic waste disposal activities are conducted and to conduct administrative inspections thereof, and of the things specified in this Section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "inspectors") designated by the Administrator. Any such inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) his administrative inspection warrant or a written notice of his other inspection authority, shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except when the owner, operator, or agent in charge of such premises so consents in writing, no inspection authorized by this Section shall extend to

(A) financial data;
(B) sales data other than shipments;
(C) pricing data;
(D) personnel data; or
(E) research data (other than data resulting from tests conducted pursuant to Section 304(b))

(b) A warrant under this Section shall not be required for entries and administrative inspection (including seizures of property) --

(1) with the consent of the owner, operator, or agent in charge of such premises;

(2) in situations presenting imminent danger to health or safety;

(3) in any other exceptional or emergency circumstances where time or opportunity to apply for a warrant is lacking; or

(4) in any other situations where a warrant is not constitutionally required.

"(c) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause issue warrants for the purpose of conducting administrative inspections authorized by this Title or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this Section, the term "probable cause" means a valid public interest in the effective enforcement of this Title or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, or buildings, to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (a)(2) to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, or building, identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give

to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place for which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, of in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this Section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

"(d) Any records, reports, or information obtained under this Section shall be available to the public except that upon a showing satisfactory to the Administrator that records, reports or information, or a particular part thereof, to which the Administrator has access under this subsection constitute trade secrets or other matter referred to in Section 1905 of Title 18 of the United States Code, the Administrator shall consider such record, report, or information or particular portion thereof confidential, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, and such information may be disclosed _in_ _camera_ relevant in any proceeding under this Act.

"SECTION 307. FEDERAL ENFORCEMENT

"(a) At the request of the Administrator, the Attorney General may institute a civil action in the appropriate district court of the United States for an injunction or other appropriate order (1) to prevent any person from engaging in toxic waste disposal operations in violation of a Federal regulatory program instituted under subsection 305(f) of this Act, the requirements of subsection 304(a) of this Act, or State regulations which the Administrator is entitled to enforce under Section 305(e) of this Act; (2) to enforce a warrant issued under Section 306 of this Act; or (3) to collect a penalty under Section 308 of this Act.

"(b) If the Administrator determines that a toxic waste disposal operation violates applicable State regulations or a State permit, he may --

(1) request the State agency to bring an action to enjoin such operations; and

(2) in the event of failure on the part of the State agency to comply with the Administrator's request within a reasonable time as determined by the Administrator, request the Attorney General to institute an action for an injunction or other appropriate order, and

(3) determine whether State failure to enforce its regulations requires withdrawal of any approval given by the Administrator under subsection 305(d) of this Act.

"SECTION 308. FINES

"(a) If any person responsible for a toxic waste disposal operation fails for more than 15 days after notification to comply with any regulation or permit which the Administrator may enforce under this Act the Administrator may order cessation of such operation. Such person shall be liable for a civil penalty of not more than $25,000 for each day of continued non-compliance after said fifteen days, to be assessed after opportunity for hearing.

"(b) Any person who knowingly violates any permit or regulation issued pursuant to this Act shall, upon conviction, be guilty of a misdemeanor and punished by a fine not exceeding $25,000 or by imprisonment not exceeding one year, or both.

"(c) The penalities prescribed in this Section shall be in addition to any other remedies afforded by this Act or by any other law or regulation.

"SECTION 309. IMMINENT AND SUBSTANTIAL HAZARDS

Whenever the Administrator determines that any toxic waste disposal activity or an existing toxic waste disposal site or facility presents an imminent and substantial hazard to human health, he shall notify the appropriate State agency. If such agency fails to take appropriate action within a reasonable time, the

Administrator may issue an order directing appropriate remedial or corrective measures to be taken. The recipient of any such order shall be afforded an opportunity for a hearing. If appropriate action is not taken promptly, the Administrator shall request the Attorney General to bring a civil suit in the United States district court in the district in which the site or facility is located to enforce the Administrator's order.

"SECTION 310. RESEARCH

The Administrator, in cooperation with the Departments of Commerce and the Interior and other Federal agencies is authorized to conduct studies, undertake research, and promote the development of new or improved procedures, methods, and techniques as may be required for the purposes of this Title.

"SECTION 311. FEDERAL LANDS

Federal agencies administering Federal lands shall issue regulations governing the disposal of toxic wastes on or under the lands under their jurisdiction. Such regulations shall be in accordance with regulations promulgated by the Administrator pursuant to Section 304 of this Act and shall be issued after consultation with the State or States within which such Federal lands are located.

SECTION-BY-SECTION ANALYSIS

Section 1 would designate the present Federal Water Pollution Control Act (FWPCA) provisions as Title I of the Act.

Section 2 adds a new Title II to the FWPCA, the Sediment Control Act.

(Title II--Sediment Control Act)

Section 201 states the purpose of the Title, to reduce sedimentation from land-disturbing activities consistent with water quality standards.

Section 202 provides applicable definitions.

Section 203 provides for the Administrator of EPA (hereinafter, the Administrator) to issue within a year of the Title's enactment guidelines for effective control of sedimentation from land-disturbing activities, such as road and building construction, and excluding agricultural and silvicultural activities and mining activities that would be regulated under the President's proposed Mined Area Protection Act.

Subsection (b) provides that the guidelines shall include information on effects of uncontrolled sediment and on the techniques for control, including their costs and effectiveness. The guidelines must also specify procedures to be followed by States in establishing control programs and designate categories of land-disturbing activities for which, within program areas, permits, general regulations, or no controls, respectively, are appropriate.

Subsection (c) prescribes that the Administrator will consult with appropriate Federal, State and local agencies in developing and revising the guidelines.

Section 204 provides the requirements for State programs. The first is a survey to be conducted, within a year of the Title's enactment to subsequently as appropriate, to determine on the basis of water quality standards critical areas of sedimentation resulting in substantial part from activities regulated under this Title in which the standards may be substantially achieved either under this Title alone or in conjunction with controls over other sedimentation sources such as agricultural runoff.

Within a year after initial Federal guidelines are issued (during which time the survey is to have been completed), States are expected to submit control programs, consistent with the guidelines, for the problem areas identified in the survey.

Further provisions for such programs, specified in subsection (b), include encouragement of the use of State or local agencies that already issue permits for land-disturbing activities, provided their programs are acceptable to the State water quality agency. A technically qualified agency must review to evaluate permits prior to issuance, a requirement applicable only where the permit-issuing agency itself lacks sufficient expertise. Adequate monitoring of regulated activities and enforcement authority must be provided.

Subsection (c) provides for Federal agencies to regulate activities on lands within their jurisdiction.

Section 205 provides for several aspects of Federal enforcement of requirements under Title II. First, Federal agencies that provide financial assistance for activities regulated under this Title will require possession of any requisite permit under Title II as a condition of assistance.

Second, section 21(b) of the FWPCA, which requires a State certification of reasonable assurance of compliance with water quality standards with respect to proposed activities for which a Federal license or permit is sought, would be modified with respect to activities regulated under Title II to require a certificate of compliance with the specific requirements imposed under Title II.

Third, the Administrator would be authorized to enforce the requirements of State programs established under Title II in the same manner as he may enforce standards established under Title I, i.e., the present Federal Water Pollution Control Act. Here the bill is drafted in anticipation of pending amendments of the FWPCA that would basically authorize Federal administrative or judicial enforcement of federally-approved State standards when a State fails to do so.

Finally, Section 205 provides for Federal establishment of and enforcement of regulations in order to abate violations of water quality standards if a State had failed to adopt an acceptable sedimentation control program within six months after the time specified for submission of such a program to the Administrator for approval.

(Title III - Toxic Waste Disposal Control Act)

Section 3 adds to the FWPCA as Title III the Toxic Waste Disposal Control Act.

Section 301 states findings, to the effect that present regulatory controls over the increasing use of land and underground strata for disposal of toxic wastes fail adequately to protect public health, and a purpose of establishing a nationwide control program relying principally on State action pursuant to Federal guidelines.

Section 302 states applicable definitions, including those of "toxic waste" and of "disposal" of such waste.

Section 303 states the policy of Title III, to permit land and underground disposal of toxic waste (hereinafter, disposal of toxic waste) after alternative disposal sites and methods have been considered and if the appropriate State or Federal official has not determined that disposal will endanger human health.

Section 304 provides for Federal regulations and guidelines for State programs. Subsection (a) provides for the Administrator to issue, initially within a year from enactment of the Title, regulations designating locations or types of locations on or under the land where certain quantities of specified toxic wastes or combinations may not be disposed. He is also called upon to designate specific substances or combinations thereof which he determines to be toxic wastes.

Subsection (b) calls upon the administrator to establish within the same time guidelines for State regulatory programs with respect to locations where toxic waste disposal may be considered. The guidelines will cover testing, monitoring, reporting, performances standards, disposal procedures, and related matters. They also specify the circumstances in which case-by-case permits and general regulations, respectively, are needed.

Section 305 covers submission and approval of State programs meeting the EPA guidelines. Subsection (a) calls for submission of such programs after public hearings and within a year after initial issuance of the Federal guidelines. Subsection (b) enumerates specific criteria for approval of State programs, such as possession by the State of adequate authority to enforce its regulations, adequate funding and manpower, a mechanism to notify other States that may be affected by issuance of a permit, and authority to take prompt action in cases of imminent and substantial dangers to health.

Subsections (e) and (h) cover withdrawal and reinstatement by the Administrator of his approval of a State program which is not being enforced.

Subsections (e) and (f) provide for the issuance and enforcement of regulations by the Administrator for a State in which a toxic waste disposal program has not been approved and established or for which approval has been withdrawn.

Subsection (g) provides for the Administrator to establish interim regulations for subsurface toxic waste disposal activities in any State which does not regulate such activity at the time of enactment of this Title, pending development and approval of such a program pursuant to this Title.

Section 306 provides for the Administrator to conduct inspections, with appropriate warrants, to carry out his functions under this Title, Subsection (d) provides for public availability of information or documents so obtained, except for trade secrets and material covered by 18 U.S.C. §1905.

Section 307 provides for Federal enforcement of applicable regulations by initiation for a civil action for injunctive or other relief. There is also provision for Federal enforcement of State regulations in any specific instance of State failure to act despite a request of the Administrator to do so.

Section 308 provides for the assessment of a civil penalty of up to $25,000 per day beyond the 15th day after notification by the Administrator of noncompliance with applicable requirements pursuant to this Title, and for criminal penalties up to $25,000 and/or one year imprisonment for knowing violations of applicable permits or regulations.

Section 309 authorizes the Administrator to request prompt action by the Attorney General whenever a State fails to act to alleviate an imminent and substantial hazard to health from either disposal activities or an existing disposal site or facility.

Section 310 authorizes the Administrator, in cooperation with other Federal agencies, to conduct studies and research on procedures, methods and techniques covered by this Title.

Section 311 provides for Federal agencies to establish control programs, as required under this Title, for lands under their jurisdiction.

Sulfur Oxides Emission Charge

OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

February 8, 1972

Dear Mr. [President/Speaker]:

There is transmitted herewith a proposed bill, "To promote the abatement of atmospheric sulphur pollution by the imposition of a tax on the emission of sulphur into the atmosphere, and for other purposes."

In his Environmental Message of February 8, 1971, the President observed that sulphur oxides are among the most damaging air pollutants, costing society billions of dollars annually in terms of human health, vegetation, and property. At that time the President stated that a charge on emissions of sulphur into the atmosphere would be a major step in applying the principle that the costs of pollution should be included in the price of the product. The President also stated that legislation to this end would be submitted to the Congress upon the completion of studies underway in the agencies most directly concerned. The Treasury Department, the Council on Environmental Quality, and the Environmental Protection Agency have completed their studies on this concept and have developed the details of sulphur oxides emissions charge, incorporated in the enclosed draft.

The proposed bill would provide for a tax, beginning with calendar year 1976, on the emissions of sulphur into the atmosphere. The tax would be imposed directly on the sulphurous emissions of those sources large enough to measure and monitor their emissions. Small emitters, who do not have facilities to measure or monitor emissions, would pay tax on the sulphur content of their fuel purchases.

The tax rate would be 15 cents per pound of sulphur emitted into the atmosphere, with reductions in or exemptions from the rate applicable in certain sulphur tax regions as determined by the Administrator of the Environmental Protection Agency. The tax would be reduced to 10 cents in regions where it was demonstrated that there was no violation of the national primary ambient sulphur oxide air standard on an average basis during the preceding calendar year. There would be no tax in regions where it was demonstrated on the same basis that there was no violation of either national primary or secondary ambient sulphur oxide air standards.

Pursuant to the Clean Air Act Amendments of 1970, national ambient standards have been set for six major air pollutants, including sulphur oxides. States are required to develop implementation plans to achieve these standards within three years. Enforcement at all levels of government may be hampered by debate over technical feasibility and commercial availability of control technology for sulphur oxides. This sulphur oxides tax will stimulate industry to develop and install control technology and use cleaner fuels as quickly as possible in order to minimize the tax liability. It will stimulate prompt compliance with ambient standards and reduce the need for ad hoc enforcement actions.

The sulphur oxides charge in no way compromises the air quality standards of the Clean Air Act. In all cases, the development of effective state regulatory programs and implementation plans will be required, and where the charge is insufficient to achieve the standards, regulatory authority will assure that the standards are met. Together, the sulphur oxides charge and existing regulatory authority provide a powerful mechanism to achieve air quality objectives.

A general explanation of the proposed bill and its background also are enclosed. A similar letter is being sent to the [President of the Senate/Speaker of the House].

The Department has been advised by the Office of Management and Budget that enactment of the proposed legislation would be in accord with the program of the President.

Sincerely,

/s/ John B. Connally

The Honorable
Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

The Honorable
Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

Enclosures

A BILL

To promote the abatement of atmospheric sulphur pollution by the imposition of a tax on the emission of sulphur into the atmosphere, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) Short Title.--This Act may be cited as the "Pure Air Tax Act of 1972".

(b) Amendment of 1954 Code.--Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. TAX ON SULPHUR EMISSIONS AND THE SULPHUR CONTENT OF FUELS.

(a) Imposition of Tax.--Chapter 39 (relating to regulatory taxes) is amended by adding at the end thereof the following new subchapter:

"Subchapter F - Environmental Quality Taxes.

"Sec. 4891. Sale of sulphurous fuels.
"Sec. 4892. Sulphur emissions by processors and registered taxpayers.
"Sec. 4893. Additional tax imposed upon sales of sulphurous fuels and sulphur emissions.
"Sec. 4894. Definitions, registration, and special rules.

"SEC. 4891. SALE OF SULPHUROUS FUELS.

"(a) Imposition of Tax.--There is hereby imposed a tax at the rate specified in subsection (b) upon each pound of sulphur contained in a sulphurous fuel sold by a registered taxpayer during any calendar year beginning after 1975.

"(b) Rate of Tax.--

"(1) In general.--Except as provided in paragraph (2), the tax imposed by subsection (a) shall be 15 cents per pound of sulphur contained in a sulphurous fuel.

"(2) Special rule.--With respect to the sulphur content of any sulphurous fuel sold during a calendar year for ultimate use in a sulphur tax region which is determined by the Administrator of the Environmental Protection Agency to be a Class II sulphur tax region for the preceding calendar year, the rate of tax imposed by subsection (a) shall be 10 cents per pound of sulphur contained in a sulphurous fuel.

"(c) Exemptions.--No tax shall be imposed under subsection (a) in respect of:

"(1) Sale for use in certain sulphur tax regions.--Sulphur contained in a sulphurous fuel sold during a calendar year for ultimate use in a sulphur tax region which is determined by the Administrator of the Environmental Protection Agency to be a Class III sulphur tax region for the preceding calendar year.

"(2) Sale to registered taxpayer.--Sulphur contained in a sulphurous fuel sold to a person who is a registered taxpayer.

"(3) Sale for nonfuel use.--Sulphur contained in a sulphurous fuel sold for a nonfuel use including, in accordance with regulations prescribed by the Secretary or his delegate, such products derived from fuels as are customarily used for nonfuel use.

"(4) Sulphurous fuels exported.--Sulphur contained in a sulphurous fuel sold for export or for resale by the purchaser for export. This paragraph shall not apply to the sale of a sulphurous fuel unless, within 6 months after the date of the sale by the registered taxpayer (or, if earlier, on the date of shipment by the registered taxpayer), the registered taxpayer receives satisfactory proof that the fuel has been exported.

"(5) Sale for use in motor vehicles.--Sulphur contained in a sulphurous fuel sold for use in a motor vehicle.

"(6) Sale for use as supplies for vessels or aircraft.--Sulphur contained in a sulphurous fuel sold for use by the purchaser as supplies for vessels or aircraft.

"(d) Floor Stocks Tax.--

"(1) In general.--There is hereby imposed a floor stocks tax on the sulphur content of sulphurous fuel held by a person who ceases to be a registered taxpayer. The tax shall be imposed at the rate which would apply under subsection (b) if the floor stocks were sold by such person for ultimate use in the sulphur tax region where they are located at the time he ceases to be a registered taxpayer.

"(2) Special rules.--Paragraph (1) shall not apply if the sulphur content of sulphurous fuel held by the person at the time he ceases to be a registered taxpayer is less than 2,000 pounds of sulphur.

"SEC. 4892. SULPHUR EMISSIONS BY PROCESSORS AND REGISTERED TAXPAYERS.

"(a) Imposition of Tax.--There is hereby imposed a tax at the rate specified in subsection (b) upon each pound of sulphur emitted into the atmosphere--

"(1) by a registered taxpayer, or

"(2) by a processor (other than as the result of the combustion or distillation of sulphurous fuel), during any calendar year beginning after 1975.

"(b) Rate of Tax.--

"(1) In general.--Except as provided in paragraph (2), the rate of tax imposed by subsection (a) shall be 15 cents per pound of sulphur emitted into the atmosphere.

"(2) Special rule.--With respect to the sulphur emissions during a calendar year in a sulphur tax region which is determined by the Administrator of the Environmental Protection Agency to be a Class II sulphur tax region for the preceding calendar year, the rate of tax imposed by subsection (a) shall be 10 cents per pound of sulphur emitted into the atmosphere.

"(c) Exemption.--No tax shall be imposed under subsection (a) in respect of sulphur emissions during a calendar year in a sulphur tax region which is determined by the Administrator of the Environmental Protection Agency to be a Class III sulphur tax region for the preceding year.

"SEC. 4893. ADDITIONAL TAX IMPOSED UPON SALES OF SULPHUROUS FUELS AND SULPHUR EMISSIONS.

"(a) Imposition of Tax.--In addition to the tax imposed under sections 4891 and 4892, there is hereby imposed a tax at the rate specified in subsection (b) upon--

"(1) Registered taxpayers.--The number of pounds by which the sum of--

"(A) the pounds of sulphur contained in sulphurous fuel sold by a registered taxpayer for ultimate use in a sulphur tax region, and

"(B) the pounds of sulphur emitted into the atmosphere in such region by such person, or

"(2) Processors.--The number of pounds of sulphur emitted into the atmosphere in a sulphur tax region by a processor (other than as the result of the combustion or distillation of a sulphurous fuel), during any calendar year beginning after 1975, which exceeds the net base pounds of sulphur of such processor or registered taxpayer for such sulphur tax region for the preceding calendar year. The amount determined under paragraph (1) (A) shall not include pounds of sulphur contained in sulphurous fuel sold by a registered taxpayer to another registered taxpayer.

"(b) Rate of Tax.--The rate of tax imposed by subsection (a) shall be--

"(1) 5 cents per pound of sulphur contained in sulphurous fuel sold for ultimate use in, or emitted into the atmosphere in, a sulphur tax region which is a Class I sulphur tax region for the calendar year and was a Class II sulphur tax region for the preceding calendar year,

"(2) 10 cents per pound of sulphur contained in sulphurous fuel sold for ultimate use in, or emitted into the atmosphere in, a sulphur tax region which is a Class II sulphur tax region for the calendar year and was a Class III sulphur tax region for the preceding calendar year, or

"(3) 15 cents per pound of sulphur contained in sulphurous fuel sold for ultimate use in, or emitted into the atmosphere in, a sulphur tax region which is a Class I sulphur tax region for the calendar year and was a Class III sulphur tax region for the preceding calendar year.

"(c) Definitions.--For purposes of this section--

"(1) Base Pounds of Sulphur.--The term 'base pounds of sulphur' means the sum of the pounds of sulphur contained in sulphurous fuel sold for ultimate use in, and the pounds of sulphur emitted into the atmosphere in, a particular sulphur tax region during a calendar year by a processor or a registered taxpayer.

"(2) Net Base Pounds of Sulphur.--The term 'net base pounds of sulphur' means the base pounds of sulphur for the calendar year--

"(A) increased by transfers of such pounds to the processor or registered taxpayer from other processors and registered taxpayers in the same sulphur tax region, and

"(B) decreased by transfers of such pounds by the processor or registered taxpayer to other processors and registered taxpayers in the same sulphur tax region.

Transfers of base pounds of sulphur shall be made in accordance with regulations prescribed by the Secretary or his delegate.

"SEC. 4894. DEFINITIONS, REGISTRATION, AND SPECIAL RULES.

"(a) Definitions.--For purposes of this subchapter:

"(1) Sulphurous fuel.--The term 'sulphurous fuel' means any natural or manufactured substance, in a raw state or after processing, which is suitable for use as a combustible fuel directly or after processing, and which contains at least one-tenth of a pound of sulphur, in elemental or compound form, per million BTU's of heat content.

"(2) Dealer in sulphurous fuel.--The term 'dealer in sulphurous fuel' means any person who customarily purchases, produces or imports sulphurous fuel in amounts exceeding 100,000 million BTU's of heat content per year and customarily sells at least 25 percent of such fuel. For purposes of this paragraph, the production of a fuel includes extraction from a mine, well or other natural deposit or the manufacture of any fuel using natural or manufactured material.

"(3) Producer-User of sulphurous fuel.--The term 'producer-user of sulphurous fuel' means any person who customarily produces or imports sulphurous fuel in amounts exceeding 100,000 million BTU's of heat content per year, at least 75 percent of which is used by such person. For purposes of this paragraph, the production of a fuel includes extraction from a mine, well or other natural deposit or the manufacture of any fuel using natural or manufactured material.

"(4) Emission source.--The term 'emission source' means any point source (as defined by regulations prescribed by the Secretary or his delegate for purposes of this section in concurrence with the

Administrator of the Environmental Protection Agency) of sulphur oxides emissions.

"(5) Purchaser of sulphurous fuel.--The term 'purchaser of sulphurous fuel' means any person who customarily purchases sulphurous fuel in amounts exceeding 100,000 million BTU's of heat content per year, at least 75 percent of which is used by such person.

"(6) Registered taxpayer.--The term 'registered taxpayer' means a person who has registered as provided under subsection (b).

"(7) Processor.--The term 'processor' means an emission source which would not be classified as such solely by reason of its sulphur oxides emissions derived from the combustion or distillation of sulphurous fuel.

"(8) Sulphur tax region.--The term 'sulphur tax region' means an air quality control region or a portion of an air quality control region which is subdivided in accordance with the provisions of subsection (d) (1).

"(9) Class I sulphur tax region.--The term 'Class I sulphur tax region' means any sulphur tax region which is not certified to be a Class II or III sulphur tax region by the Administrator of the Environmental Protection Agency.

"(10) Class II sulphur tax region.--The term 'Class II sulphur tax region' means any sulphur tax region which is certified by the Administrator of the Environmental Protection Agency to be a Class II sulphur tax region.

"(11) Class III sulphur tax region.--The term 'Class III sulphur tax region' means any sulphur tax region which is certified by the Administrator of the Environmental Protection Agency to be a Class III sulphur tax region.

"(12) Air quality control region.--The term 'air quality control region' means a region designated in accordance with the provisions of section 107 of the Clean Air Act, as amended and supplemented (42 U.S.C. 1857c-2).

"(13) Nonfuel use.--The term 'nonfuel use' means a use of a sulphurous fuel in which no product derived from such fuel is released into the atmosphere.

"(14) Supplies for vessels or aircraft.--The term 'supplies for vessels or aircraft' shall have the same meaning as set forth in section 4221 (d) (3).

"(b) Registration.--

"(1) Dealer in sulphurous fuel.--Any person who is a dealer in sulphurous fuel shall be required to register (in accordance with regulations prescribed by the Secretary or his delegate) for a calendar year if, during any one of the five calendar years preceding the taxable year, such person--

"(A) purchased, imported or produced sulphurous fuel containing more than 250,000 million BTU's of heat content, or

"(B) emitted more than 1,000 tons of sulphur into the atmosphere.

"(2) Producer-User of sulphurous fuel.--Any person who is a producer-user of sulphurous fuel shall be required to register (in accordance with regulations prescribed by the Secretary or his delegate).

"(3) Emission source.--Any person (other than a processor) who operates or maintains an emission source during any calendar year beginning after 1974, shall be required to register (in accordance with regulations prescribed by the Secretary or his delegate) on or before January 1 of the succeeding calendar year.

"(4) Optional registration.--Any person who is a dealer in sulphurous fuel or a purchaser of sulphurous fuel who establishes (in accordance with regulations prescribed by the Secretary or his delegate) that he is capable of measuring the sulphur content of sulphurous fuel sold or used by him, may register as a dealer in or purchaser of sulphurous fuel.

"(c) Attribution of Emissions.--For purposes of sections 4892 and 4893, emissions are taxable at the rate applicable to the sulphur tax region in which such emissions occur except that any emission which is certified by the Administrator of the Environmental Protection Agency to contribute to a violation of the national ambient sulphur oxides air standards (as prescribed in accordance with the provisions of section 109 of the Clean Air Act, as amended and supplemented (42 U.S.C. 1857c-4) in another sulphur tax region shall be treated as emitted in the other sulpher tax region if the tax resulting from such treatment is greater.

"(d) Designation and Classification of Sulphur Tax Regions.--For purposes of this subchapter--

"(1) Designation.--

"(A) General rule.--Except as provided in subparagraph (B), each air quality control region shall be a sulphur tax region.

"(B) After consideration of petitions from the Governor of each State having territory within a particular air quality control region, the Administrator of the Environmental Protection Agency may divide such region into two or more sulphur tax regions if he deems such division appropriate. Such petitions shall be submitted in accordance with regulations prescribed by the Administrator of the Environmental Protection Agency.

"(2) Classification of sulphur tax regions.--A sulphur tax region shall be designated by the Administrator of the Environmental Protection Agency for a calendar year as--

"(A) a Class I sulphur tax region if such region is not designated a Class II or III sulphur tax region,

"(B) a Class II sulphur tax region if the Governor of the State wherein such region is located demonstrates (in accordance with regulations prescribed by the Administrator of the Environmental Protection Agency) that there was no violation of the national primary ambient sulphur oxides air standard within such region on an average basis during the calendar year, or

"(C) a Class III sulphur tax region if the Governor of the State wherein such region is located demonstrates (in accordance with regulations prescribed by the Administrator of the Environmental Protection Agency) that there was no violation of the national primary or secondary ambient sulphur oxides air standards within such region on an average basis during the calendar year.

"(e) Measurement of Emissions.--For purposes of sections 4892 and 4893, taxable emissions resulting from the combustion or processing of sulphurous fuels or the smelting of ores may be estimated in accordance with regulations prescribed by the Secretary or his delegate in consultation with the Administrator of the Environmental Protection Agency.

"(f) Controlled Group of Corporations.--For purposes of this subchapter, a controlled group of corporations shall be treated as a single person and the term 'controlled group of corporations' shall have the same meaning assigned to such term by section 1563 (a) except that 50% shall be in lieu of 80% wherever such percentage appears therein.

"(g) Cross Reference.--For penalties and other general administrative provisions applicable to this subchapter, see subtitle F."

(b) Refunds of the Tax Imposed Upon the Sulphur Content of Sulphurous Fuels.--Subchapter B of Chapter 65 (relating to rules of special application) is amended by adding at the end thereof the following new section:

"SEC. 6428. SULPHUR CONTENT OF SULPHUROUS FUELS EXPORTED, SOLD TO A REGISTERED TAXPAYER OR USED FOR NONFUEL USES.

"(a) General Rule.--The tax paid under section 4891 on the sulphur content of a sulphurous fuel shall be deemed to be an overpayment by the person who paid such tax if such fuel is exported, sold to a registered taxpayer, or used by the ultimate purchaser for a nonfuel use. The amount deemed to be an overpayment shall be based upon the sulphur content of such fuel at the time the fuel is exported, sold to a registered taxpayer, or used for a nonfuel use. The tax paid on the sulphur content of a sulphurous fuel which has been exported may be refunded to the exporter thereof, if the person who paid the tax waives his claim to such amount.

"(b) Condition of Allowance.--No credit or refund of any overpayment to the person who paid the tax on the sulphur content of a sulphurous fuel shall be made unless such person establishes, under regulations prescribed by the Secretary or his delegate, that he--

"(1) has not included the tax in the price of the fuel with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such fuel;

"(2) has repaid or agreed to repay the amount of the tax to the purchaser or exporter of the fuel; or

"(3) has obtained the written consent of such purchaser or exporter to the allowance of the credit or the making of the refund.

"(c) Definitions.--

"(1) Sulphurous fuel.--As used in this section, the term 'sulphurous fuel' shall have the same meaning as set forth in section 4894 (a) (1).

"(2) Nonfuel use.--As used in this section, the term 'nonfuel use' shall have the meaning as set forth in section 4894 (a) (13).

"(3) Registered taxpayer.--As used in this section, the term 'registered taxpayer' shall have the same meaning as set forth in section 4894 (a) (6).

"(d) Credit Against Tax Imposed by Section 4891.--A credit may be allowed against the tax imposed under section 4891, which is due on any subsequent return, for an amount equal to the payment authorized under this section.

"(e) Exempt Sales.--No amount shall be payable under this section with respect to the sulphur content of a sulphurous fuel which the Secretary or his delegate determines was exempt from the tax imposed by section 4891.

"(f) Regulations.--The Secretary or his delegate may by regulations, not inconsistent with the provisions of this section, prescribe the conditions under which payments may be made under this section, the amount to which any person is entitled under this section with respect to any period, or the amount which may be treated by such person as an overpayment which may be credited against the tax imposed by section 4891."

(c) Clerical Amendments, etc.--

(1) The table of subchapters for chapter 39 of subtitle D is amended by adding at the end thereof the following new subchapter:

"Subchapter F. Environmental Quality Taxes".

(2) The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following:

"Sec. 6428. Sulphur content of sulphurous fuels exported, sold to a registered taxpayer, or used for nonfuel uses."

SEC. 3. STATE TAXATION OF SULPHUR CONTENT OF SULPHUROUS FUELS.

Nothing in this title or in any other law of the United States shall prevent the several States from taxing the sulphur content of sulphurous fuels.

SEC. 4. EFFECTIVE DATE.

Except as otherwise expressly provided, the amendments made by this Act shall take effect on the day after the date of enactment of this Act.

BACKGROUND AND DETAILED EXPLANATION

Pure Air Tax Act of 1972

I. Background

A. The Problem of Sulphur Oxides

Sulphur oxides have been identified as one of the major causes of the health and property damage from air pollution. The Environmental Protection Agency estimates damages from sulphur oxides at present levels to be $8 billion annually or about 20 cents per pound of sulphur, on average.

Sulphur oxides result from the burning and distilling of coal and oil, the smelting or ores, and other industrial processes. An estimated 36.6 million tons of sulphur oxides are now emitted each year. If uncontrolled, annual sulphur oxides emissions will nearly quadruple, to an estimated 126 million tons by the year 2000. The problem is serious now and will certainly become worse in the absence of effective remedial action.

B. Strategies for Controlling Sulphur Oxides

1. Under the Clean Air Act and the 1970 Clean Air Amendments, the Environmental Protection Agency has set air quality standards (referred to as "ambient" standards in the Clean Air Act) for sulphur oxides: the national primary ambient air quality standard is intended to protect health and the national secondary ambient air quality standard to protect materials and vegetation.

Guidelines have been issued to assist states in developing implementation plans to meet all national primary air quality standards, including the standard for sulphur oxides. Under the law, each state must submit a plan to meet the national primary air quality standards, and EPA is receiving such plans which are designed to achieve national primary air quality standards within three years. Upon approval by EPA of the state plans, the states must implement these plans by approximately mid-1975. Exemptions from the three-year requirement can be made by the Administrator of the Environmental Protection Agency only is adequate control methods are not commercially available or have not been available for a sufficient period of time.

2. In his Environmental Message to Congress in 1971, President Nixon stated:

> "Last year in my State of the Union message I urged that the price of goods 'should be made to include the cost of producing and disposing of them without damage to the environment.' A charge on sulfur emitted into the atmosphere would be a major step in applying the principle that the costs of pollution should be included in the price of the product. A staff study underway indicates the feasibility of such a charge system.
>
> "--Accordingly, I have asked the Chairman of the Council on Environmental Quality and the Secretary of the Treasury to develop a Clean Air Emissions Charge on emissions of sulfur oxides. Legislation will be submitted to the Congress upon completion of the studies currently underway."

The work requested by the President has now been completed, and a bill "To promote the abatement of atmospheric sulphur pollution by the imposition of a tax on the emission of sulphur into the atmosphere, and for other purposes" is now being submitted to the Congress.

C. The interaction of the Tax and Regulatory Authority

1. A major role of the sulphur tax is as an aid to enforcement of the implementation plans for achieving the national primary ambient air quality standard for sulphur oxides and as an incentive to quickly meet the national secondary ambient air quality standard for sulphur oxides. Under a regulatory system without the tax, there may be enforcement problems. If there is substantial debate on technological feasibility or commercial availability of control equipment, the charge will minimize requests for variances and lengthy court proceedings.

The sulphur emissions tax reverses current incentives by making emissions more expensive than emission control. Control devices are no longer expensive and unprofitable items, to avoid wherever feasible and to use as little as possible, but are now productive and profitable investments, to be sought out, developed, and utilized fully. There is less to be gained by delaying compliance with standards, and more profit in reducing emissions, when emissions are expensive. With the emitters' incentives reversed in this way, the number of enforcement actions by regulatory authorities should be reduced, as should the demand for variances and delays since variances and delays will cost the emitters money. The tax will produce much more rapid decreases in emissions, with much less regulation of individual decision, and with much less conflict and litigation.

2. A second major role of the tax is to assist in achieving the national ambient air quality standards for sulphur oxides with greater economic efficiency. In concept, the states could achieve the national ambient air quality standards at minimum cost to the society by requiring greater emission reductions from emitters whose costs of controlling emissions are low and lesser reductions where control costs are high. (For example, a 75 percent reduction in emissions may be achieved by requiring all emitters to reduce emissions by 75 percent; but the same result may be achieved more cheaply by having some emitters reduce emissions by only 60 percent and others -- whose control costs are low -- by 90 percent.) This advantage may very well prove to be more significant in meeting the national ambient secondary air quality standard for sulphur oxides than in meeting the national ambient primary air quality standard for sulphur oxides.

The difficulty with achieving this optimum outcome is that it is impossible for a state to know very much about the control costs of individual emitters; and even if the knowledge were readily available, there are problems of equity and enforcement. As a consequence, state implementation plans may require the same percentage emission reduction from each source or, perhaps, the use of low sulphur fuels only. Case studies indicate that this approach can double or triple the costs of meeting the ambient standards. These unnecessary costs, ultimately borne by consumers, do nothing to improve air quality.

But with the sulphur oxides tax in effect, a lower cost solution can be obtained. The tax encourages those firms with low control costs to reduce emissions more, since they have the most to gain in tax savings. Those with higher control costs will not make such large reductions in emissions, but will pay high charges. Compared with a requirement of an equal percentage reduction for all emitters, the result should be a more efficient pattern of emission control, which can reduce the cost of meeting the standards.

3. It is important to note that the tax in no way compromises or vitiates the national ambient air quality standards of the Clean Air Act. In all cases, the development of effective state regulatory programs and implementation plans pursuant to the Clean Air Act will be required to assure that these standards are met. In some regions, the addition of the charge will obviate the need for a large number of enforcement actions and ensure compliance with national ambient air quality standards for sulphur oxides. In other regions, the charge may be insufficient and if lags in compliance are encountered, enforcement actions will be required and vigorously pursued to meet the standards.

The sulphur oxides emissions tax has been carefully designed to complement and strengthen the Clean Air Act and its amendments. The tax does not come into effect until 1976, the year following the deadline for meeting national primary ambient air quality standards under the Clean Air Act. Similarly, the tax rate varies according to the air quality in the air quality control regions defined by the Environmental Protection Agency pursuant to the Clean Air Act. In regions where the air quality standards for sulphur oxides are met, no tax will be imposed. In regions where -- for whatever reason -- air quality standards for sulphur oxides are not met, the tax will serve as a continuous enforcement mechanism which will reinforce regulatory action to bring about rapid compliance with those air quality standards. Together, the Clean Air Act and the sulphur oxides emissions tax constitute an effective and efficient solution to the problem of pollution from sulphur oxides.

II. Operation of Tax on Emissions of Sulphur Into the Atmosphere

A. Imposition of Basic Tax on Sales and Emissions

1. In general

The intention of the sulphur tax is to impose a charge on sulphur actually emitted into the atmosphere from the combustion of fuels, smelting of ores, and other industrial processes in regions which after 1975 fail to meet national air quality standards for sulphur oxides.

As to fuels, the technique is to provide a tax on the sulphur content of fuels intended for use in the designated regions. The bill provides, however, that fuel sales will be tax free to a buyer who is "registered." Registration requires, among other things, the ability to measure sulphur oxides emissions arising from use of the fuel. Thus, an emitter who establishes that he can provide measurements of sulphur oxides can buy fuel tax free, but becomes subject to tax on the sulphur that escapes into the atmosphere. If the buyer has equipment that removes 90 percent of the sulphur content of the fuel, tax need be paid only on the remaining 10 percent.

Ores always can be purchased tax free regardless of the sulphur content. Processors of these ores are liable for tax on sulphur emissions from processing of the ores on the same terms as registered fuel users.

The rate of tax will depend upon the classification of the air quality control region in which the emissions occur. Air quality control regions are classified as Class I (violation of national primary ambient sulphur oxides air standard), Class II (national primary sulphur oxides standard is met, but national secondary sulphur oxides standard is violated), or Class III (both national primary and secondary sulphur oxides standards are met). Since the quality of the air is lowest in Class I regions, higher in Class II, and highest in Class III, the tax rate is highest in Class I (15 cents per pound), lower in Class II (10 cents per pound), and zero in Class III. The tax will be imposed on taxable sales and emissions beginning with the calendar year 1976.

2. Sales of sulphurous fuel

(a) Taxable sales. The tax on sales is imposed on sales of "sulphurous fuels." This term is defined as any natural or manufactured substance, in a raw state or after processing, which contains at least one-tenth of a pound of sulphur (in elemental or compound form) per million BTU's of heat content. Only sales by persons who are "registered taxpayers" will be subject to the tax. Under the bill, registration (with the Secretary of the Treasury or his delegate) will be required of most dealers in sulphurous fuel, all "producer-users" of sulphurous fuel, and all persons who operate, during 1974 or later years, an emission source which is defined as a "point source" of sulphur oxides emissions (within the meaning of regulations prescribed by the Secretary of the Treasury or his delegate in concurrence with the Administrator of the Environmental Protection Agency).

A dealer in sulphurous fuel means a person who customarily purchases, produces, or imports sulphurous fuel in amounts exceeding 100,000 million BTU's of heat content per year and customarily sells at least 25 percent of such fuel. (For all purposes under the bill, production of a fuel includes extraction of fuel from a natural deposit, as well as the manufacture of a fuel using natural or manufactured materials.) Such persons as oil well operators and coal mine operators would be included in this category, i.e., persons who are primarily suppliers of sulphurous fuels. Even though a purchaser, importer, or producer meets this defintion of a "dealer," registration is required only if the dealer, during any one of the five calendar years immediately preceding the current calendar year, (i) purchased, imported, or produced sulphurous fuel containing more than 250,000 million BTU's of heat content, or (ii) emitted more than 1,000 tons of sulphur into the atmosphere.

A "producer-user of sulphurous fuel" is defined in the bill as any person who customarily produces or imports sulphurous fuel in amounts exceeding 100,000 million BTU's of heat content per year, at least 75 percent of which is used by such person. Included in this category are companies or power plants which own their own oil wells or mines, or import sulphurous fuels, primarily for their own use, but whose use is not sufficient to cause them to be classified as emission sources. Persons in this category must register since the fuel they use will not have been previously taxed.

In addition to these taxpayers who are required to register under the bill, any other person who is a dealer in sulphurous fuel, as defined above, or a "purchaser of sulphurous fuel" (a person who customarily purchases fuel in amounts exceeding 100,000 million BTU's of heat content per year and uses at least 75 percent of such amount) may, at his option, register, provided that such a dealer or purchaser establishes that he is capable of measuring the sulphur content of sulphurous fuels sold or used by him. Presumably, optional registration will be used by persons whose use of sulphurous fuels is too small to require registration, but who will remove sulphur from fuel prior to use or sale.

(b) Rate of tax. The rate imposed on sales of sulphurous fuels is determined according to the "sulphur tax region" in which the fuel sold is destined for ultimate use. Initially, the sulphur tax regions will be the 247 air quality control regions already defined by the Environmental Protection Agency pursuant to the Clean Air Act. Recognizing that imposition of the tax may be inequitable if it can be demonstrated that one or a few emitters are responsible for the region's tax classification and that the ambient standards for sulphur oxides are violated in only a portion of that region, the bill provides that the governor of a state having territory within a particular air quality control region may petition to have the region subdivided into two or more sulphur tax regions. The Administrator of the Environmental Protection Agency will make the determination on granting such petitions.

The Administrator of the Environmental Protection Agency will be charged with the responsibility of classifying each sulphur tax region for purposes of the tax. If he finds, on petition of the governor, that there was no violation of the national primary or secondary ambient sulphur oxides air standards (as prescribed in accordance with the provision of section 109 of the Clean Air Act, as amended and supplemented (42 U.S.C. 1857c-4)) within a region on an average basis during the calendar year, the region will be classified as a Class III sulphur tax region. If the Administrator finds there was no violation of the national primary ambient sulphur oxides air standard within such region on an average basis during the calendar year, but there was violation of the secondary standard, the region will be classified as a Class II region. If the Administrator finds that both the national primary and secondary ambient sulphur oxides air standards have been violated within the region on an average basis during the calendar year, the region will be classified as a Class I sulphur tax region.

The rate of the basic tax is determined by the classification of the region for the year preceding the year in which the taxable sale takes place. With the air standards based upon annual averages, the preceding year's classification is used so that taxpayers will know the rate of tax being incurred on sales and emissions during the current year. Fuel sold for ultimate use in a sulphur tax region classified as a Class I region for the preceding year will be subject to a tax of 15 cents per pound of sulphur contained therein. Fuel sold for use in a region classified as a Class II region for the preceding year will be taxed at a rate of 10 cents per pound of sulphur contained therein. The basic tax is not imposed on sulphurous fuel sold for ultimate use in a region classified as a Class III region for the preceding year.

(c) Exemptions. The primary exemption from the tax on sales of sulphurous fuel is the exemption for sales to other registered taxpayers. This will permit deferral of the tax until the fuel is sold to an unregistered taxpayer, or is ultimately used by the registered taxpayer, at which time the sulphur actually emitted into the atmosphere will be taxed. Thus a registered taxpayer will not be taxed on sulphur which he removes from fuel prior to its sale or use. Sales of fuel to unregistered taxpayers must be taxed since such persons are users of relatively small quantities of sulphurous fuel and may be presumed not to have the facilities to measure and monitor emissions.

Exemptions from the tax on sales of sulphurous fuel are also provided for sales for non-fuel use, for use in motor vehicles, for use as supplies in vessels or aircraft, and sales for export. The exemption for exports is granted only if the seller receives proof that the fuel sold was in fact exported within six months after the date of the sale (or, if earlier, the date of shipment by the seller).

3. Floor stocks tax

A floor stocks tax is imposed under the bill if a person ceases to be a registered taxpayer. This tax is imposed on the sulphur content of sulphurous fuel held by such taxpayer on the date he ceases to be a registered taxpayer, providing that such content exceeds 2,000 pounds. The rate of tax is determined as though he had sold such floor stocks on such date for ultimate use in the sulphur tax region where such floor stocks were then located.

The floor stocks tax prevents a person who ceases to be a registered taxpayer from using sulphurous fuel without incurring a tax, since as a registered taxpayer the fuel would have been purchased tax free.

4. Sulphur emissions

Under the bill a tax is imposed upon sulphur emitted into the atmosphere by a registered taxpayer or a "processor." A "processor" is defined as an emission source which would not be classified as such solely by reason of its sulphur oxides emissions derived from the combustion or distillation of sulphurous fuel. This would generally include operations such as smelters and sulphuric acid plants.

As in the case of the tax on sales of sulphurous fuel, the rate of tax on emissions is dependent upon the classification of the sulphur tax region in which the emissions occur for the year preceding the year in which the taxable emissions occur. The rate will be 15 cents per pound of sulphur emitted into the atmosphere in a region which was a Class I region for the preceding year, and 10 cents per pound in a region which was a Class II region for the preceding year. The basic tax on sulphur emissions does not apply to emissions in a region classified as a Class III region for the preceding year.

The bill provides that taxable emissions resulting from the combustion or processing of sulphurous fuels or smelting of ores may be estimated in accordance with regulations prescribed by the Secretary of the Treasury or his delegate in consultation with the Administrator of the Environmental Protection Agency.

Although the rate of tax on emissions (including the rate under the additional tax on sulphur emissions described below) is normally determined by the sulphur tax region in which the emissions occur, the bill provides that the Administrator of the Environmental Protection Agency may certify that an emission contributes to a violation of the national ambient sulphur oxides air standards in another sulphur tax region. In the event of such a certification, such sulphur emissions shall be taxed as though emitted in the region designated by the Administrator if the tax resulting from such treatment is greater than the tax which would otherwise be imposed under the bill.

B. Imposition of Additional Tax on Sales and Emissions

In addition to the taxes on sales of sulphurous fuels and on sulphur emissions, the bill imposes a tax on increased sales and emissions by a taxpayer in a sulphur tax region when such increase is coupled with increased sulphur pollution in that region over the preceding year. This additional tax is designed to prevent taxpayers from increasing sales of sulphurous fuels or sulphur emissions secure in the knowledge that their tax would be low (or there would be no tax) because the region carried a low sulphur pollution classification during the preceding year, the rate of basic tax on sales and emissions being determined from the classification of the region in such preceding year. In such a case the additional tax would be applicable to increased sales and emissions in the current year if the region's classification has deteriorated.

The additional tax is imposed on the increase in the number of pounds of sulphur contained in sulphurous fuel sold for use in, and emitted into the atmosphere in, a sulphur tax region by a registered taxpayer or a processor during any calendar year after 1975, over the "net base pounds of sulphur" for the preceding year. The term "base pounds of sulphur" is defined as the total number of pounds of sulphur contained in sulphurous fuels sold for use in and emitted into the atmosphere in that sulphur tax region by that taxpayer during a calendar year. The term "net base pounds of sulphur" means the base pounds of sulphur, increased by transfers of base pounds from and decreased by transfers of base pounds to other taxpayers in the same region.

Since the additional tax applies only to increases in sales or use in a given region, it is necessary for the bill to allow transfers of base pounds (which operate as an exemption from the additional tax) within a given region to cover such situations as the merger of two companies in that region or the sale by one company of its business in that region to another company in that region. In these situations, it is appropriate to allow the exemption from the additional tax to pass to the surviving company, while preventing the other company from receiving that exemption. This is accomplished in the bill by allowing the purchasing or surviving company to increase its own base pounds by the selling of merged company's base pounds, and requiring the selling or merged company to decrease its base pounds by the same amount.

In addition, the allowance of transfers of base pounds permits a company whose business may decline in that region for a particular year to transfer its base pounds to another company in that region whose business might increase. This is appropriate since the additional tax operates on the overall increase in sulphur oxides pollution in a given region.

The rate of the additional tax is dependent upon the change in classification of the particular sulphur tax region. Thus, the tax on the increase is five cents per pound of sulphur contained in sulphurous fuel sold for ultimate use in, or emitted into the atmosphere in, a sulphur tax region which was a Class II sulphur tax region for the preceding calendar year and is a Class I sulphur tax region for the current calendar year (i.e., the year of sales or emissions). The rate of tax on the increase is 10 cents per pound if the sulphur tax region has moved from a Class III region for the preceding calendar year to a Class II region for the current calendar year. Finally, a rate of 15 cents per pound on the increase is imposed if the region has moved from a Class III sulphur tax region for the preceding calendar year to a Class I sulphur tax region for the current calendar year.

C. Refunds and Credits

The bill contains provisions for refund or credit of the tax where, following a taxable sale of sulphurous fuel, a non-taxable sale or use of the fuel occurs. Thus, the bill provides for a refund or credit to the person who paid the tax if fuel is subsequently exported, sold to a registered taxpayer, or used by the ultimate purchaser for a non-fuel use. The amount of any overpayment is based upon the sulphur content of the fuel at the time of the subsequent exportation, sale to a registered taxpayer, or use for a non-fuel purpose.

No refund or credit is available unless the person who paid the tax establishes one of three conditions: (1) that he has not included the tax in the price of the fuel with respect to which it was imposed, and has not collected the amount of the tax from the person who purchased such fuel; (2) that he has repaid or agreed to repay the amount of the tax to the purchaser or exporter of the fuel; or (3) that he has obtained the written consent of the purchaser or exporter to the allowance of the credit or the making of the refund.

Recycling Wastes

RECYCLING WASTES

Solid wastes present a growing environmental problem, resulting in unsightly open dumps and air and water pollution. Much of the growth is due to increased consumption while the percentage of material that is reused or recycled has decreased.

The Resource Recovery Act of 1970 recognizes the importance of recycling. It provides authority to develop and demonstrate recycling technology and provides for studies of secondary markets and economics. Studies to date indicate that improved economics is a key element to increased recycling. Without improved economics, dumping and burning will continue to be cheaper than recycling, and waste use will be more expensive than virgin materials use. In addition to improved economics, private sector involvement must be stimulated. Recycling requires the operation and management of sophisticated equipment and the efficient marketing of the recovered wastes. The private sector's marketing and management expertise must be effectively utilized if recycling is to flourish.

The President's Proposal

The President announced that the Treasury Department is clarifying the availability of tax exempt industrial development bonds for recycling facilities. This will allow private firms to utilize these bonds to finance facilities to recycle their own wastes and municipal wastes.

This clarification will assure that recycling is provided the same incentive as the more traditional disposal concepts. Most important, it will allow more economic recycling operations and offer an economic incentive for industry to use its expertise to help solve municipal solid waste disposal problems.

Integrated Pest Management

INTEGRATED PEST MANAGEMENT

Over the past several decades there has developed an increasing reliance on the exclusive use of chemicals to control pests. The use of chemical pesticides has helped to alter farming practices, to increase agricultural and forest production significantly, and to protect man from disease. Yet, it is becoming ever more apparent that adverse environmental effects often are associated with chemical pest control programs. These include occupational health problems, pest resistance, pesticide persistence, residue biomagnification, secondary pest outbreaks, and other ecological disruptions.

Recognizing these difficulties, the President in February 1971, transmitted to the Congress a comprehensive proposal to regulate the use of chemical pesticides, the Federal Environmental Pesticide Control Act of 1971. The proposal still awaits final Congressional approval, although the House has passed H.R. 10729, which contains many of its essential features.

The President is now initiating a series of actions to develop and implement alternative means of pest control that will allow sustained high levels of crop productivity while minimizing the adverse effects associated with use of chemical pest controls. This involves the use of integrated pest management, an approach based on the maximum use of natural pest population controls combined with the judicious use of selective chemical pesticides, biological controls, pest pathogens, and other pest control practices, as needed. The objective is control of pest population levels rather than complete pest eradication. Integrated pest management offers the promise of improved agricultural production, more effective pest control, and minimum adverse environmental impact, all at significantly reduced costs.

The President's Proposals

- The President has directed the Department of Agriculture, the National Science Foundation, and the Environmental Protection Agency to expand the present broad base of Federally sponsored pest control research by initiating immediately a $3.5 million per year integrated pest management research and development program. In the initial years this innovative program will involve extensive research by a number of universities to develop new field applications of integrated pest management on six major crop ecosystems: citrus, cotton, pine, pome and stone fruit, soybeans, and alfalfa.

- The President has directed the Department of Agriculture to conduct extensive field tests of promising new methods of pest detection and control. This will require $800,000 in the remainder of the current fiscal year and $2.8 million per year beginning in fiscal year 1973 to test the feasibility of ideas resulting from current research programs.

- The President has further ordered a review of all Federal pest control programs to determine which may incorporate or test new pest management techniques.

- To stimulate the use of integrated pest management and to encourage the development of career opportunities in this field, the President has directed the Department of Agriculture, the Department of Health, Education, and Welfare, and other relevant agencies to cooperate in the development of training programs at appropriate academic institutions throughout the country. In addition, the Department of Agriculture has been instructed to establish guidelines for State certification of private crop protection specialists offering professional pest management services to farmers.

- The President has authorized the Department of Agriculture to expand its pilot crop field scout program to cover nearly 4 million acres under agricultural production in the coming growing season. This program involves the training and employment of 2,000 high school and college students to monitor pest levels on approximately 2,000 acres apiece throughout the growing season. The scouts will help determine when pest populations reach levels which require a pesticide application to prevent economic damage to the crop. Through this program many unnecessary pesticide applications can be eliminated. USDA will carry out this program on a cost-sharing basis for a 3-year period, whereupon it is expected that the program will be self-sufficent. This will allow new crops to come under the program in the following years.

- To prevent hazardous exposures of agricultural workers to direct pesticide applications or contaminated surfaces, such as sprayed foliage, the President has directed the Departments of Labor and Health, Education, and Welfare to develop worker protection standards and regulations under the Occupational Safety and Health Act.

A National Land Use Policy

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 8, 1972

Dear Mr. Chairman:

On February 11, 1971, I forwarded to Congress on behalf of the Administration a proposed "National Land Use Policy Act of 1971". Hearings on that bill, H.R. 5504 and other similar legislation, have been held before your Committee, and we understand the Committee is in the process of preparing its report.

I cannot overly stress the importance of this legislation. Land is our most basic and most abused resource. As the President said in his environmental message last year, "The use of our land not only affects the natural environment but shapes the pattern of our daily lives. Unfortunately, the sensible use of our land is often thwarted by the inability of the many competing and overlapping local units of government to control land use decisions which have regional significance." The Administration's proposal represents a crucial step towards reshaping the patterns of land use in closer harmony with wise environmental concepts.

During the past year this topic has received a great deal of public attention. The Council on Environmental Quality released in December, 1971, a study of the latest developments in the land use laws of several States. The Congressional hearings stimulated useful public debate.

In his environmental message to Congress today, the President reiterated his concern with abuse of our land resources and stressed the need for early action to promote responsible land use practices. Because of the importance he attaches to that topic, and as a result of the public attention which it has received, the President proposed two amendments to broaden and strengthen the Administration's proposal. The first would clarify the scope of State land use regulatory programs explicitly to include control over the siting of such key facilities as major airports, highways and recreation facilities. The second would provide sanctions against any State which failed to implement an adequate land use program.

The legislation submitted last year provided in part that to qualify for Federal funding the State land use program must include a method for exercising control over areas impacted by key facilities. Key facilities were defined as public facilities which tend to induce development and urbanization of more than local impact including major airports, highways and recreation facilities. Decisions as to the actual siting of such key facilities can, of course, dictate the uses to which the surrounding lands subsequently are put. Thus, we believe it desirable clearly to require that the States' land use programs include methods for exercising control over key facility site location, as well as major improvements and access features of such facilities.

Under our proposal of last year, the principal incentive for States to develop land use programs was the Federal matching grants for program development and program management. We now are persuaded that economic sanctions as well as grants should be provided to assure State action. Recognizing the significant effect which key facilities can have on broad land use patterns, the sanctions which we propose would reduce the amount of financial assistance under those Federal programs with the most far-reaching effect upon land use -- airport and highway construction and recreation facilities. The proposed reductions would apply to any State which has not developed an adequate land use program by June 30, 1975. Any funds withheld from States which have not implemented adequate land use programs would be diverted to States complying with the National Land Use Policy Act, since complying States would be better able to make sound decisions with respect to activities with major land use impacts.

Attached to this letter is proposed language which would accomplish the objectives set forth above. In addition, in view of the passage of time since the proposal was introduced, the dates contained in certain sections (listed on the attachment) must be revised.

I urge that the Congress adopt these recommended amendments and act promptly to complete its consideration of this vitally important legislation.

The Office of Management and Budget has advised that enactment of H.R. 5504, with the amendments recommended herein, would be in accord with the program of the President.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Henry M. Jackson
Chairman, Committee on
Interior and Insular Affairs
U.S. Senate
Washington, D.C. 20510

Honorable Wayne N. Aspinall
Chairman, Committee on
Interior and Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Enclosure

A BILL

To establish a national land use policy; to authorize the Secretary of the Interior to make grants to encourage and assist the States to prepare and implement land use programs for the protection of areas of critical environmental concern and the control and direction of growth and development of more than local significance; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the "National Land Use Policy Act of ~~1971~~ 1972."

FINDINGS AND DECLARATIONS OF POLICY

Section 101. (a) The Congress hereby finds and declares that decisions about the use of land significantly influence the quality of the environment, and that present State and local institutional arrangements for planning and regulating land use of more than local impact are inadequate, with the result:

(1) that important ecological, cultural, historic and aesthetic values in areas of critical environmental concern which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(2) that coastal zones and estuaries, flood plains, shorelands and other lands near or under major bodies or courses of water which possess special natural and scenic characteristics are being damaged by ill-planned development that threaten these values;

(3) that key facilities such as major airports, highway interchanges, and recreational facilities are inducing disorderly development and urbanization of more than local impact;

(4) that the implementation of standards for the control of air, water, noise and other pollution is impeded;

(5) that the selection and development of sites for essential private development of regional benefit has been delayed or prevented;

(6) that the usefulness of Federal or federally-assisted projects and the administration of Federal programs are being impaired;

(7) that large-scale development often creates a significant adverse impact upon the environment.

(b) The Congress further finds and declares that there is a national interest in encouraging the States to exercise their full authority over the planning and regulations of non-Federal lands by assisting the States, in cooperation with local governments, in development land use programs including unified authorities, policies, criteria, standards, methods and processes for dealing with land use decisions of more than local significance.

DEFINITIONS

Section 102. For purposes of this Act: (a) "Areas of critical environmental concern" are areas where uncontrolled development could result in irreversible damage to important historic, cultural, or aesthetic values, or natural systems or processes, which are of more than local significance; or life and safety as a result of natural hazards of more than local significance. Such areas shall include:

(1) Coastal zones and estuaries: "Coastal zones" means the land, waters, and lands beneath the waters in close proximity to the coastline (including the Great Lakes) and strongly influenced by each other, and which extend seaward to the outer limit of the United States territorial sea and include areas influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, sounds, embayments, harbors, lagoons, inshore waters, channels, and all other coastal wetlands. "Estuary" means the part of the mouth of a river or stream or other body of water having unimpaired natural connection with the open sea and within which the sea water is measurably diluted with fresh water derived from land drainage;

(2) shorelands and flood plains of rivers, lakes, and streams of State importance;

(3) rare or valuable ecosystems;

(4) scenic or historic areas; and

(5) such additional areas of similar valuable or hazardous characteristics which a State determines to be of critical environmental concern.

(b) "Key facilities" are public facilities which tend to induce development and urbanization of more than local impact and include the following:

(1) any major airport that is used or is designed to be used for instrument landings;

(2) interchanges between the Interstate Highway System and frontage access streets or highways; major interchanges between other limited access highways and frontage access streets or highways; and

(3) major recreational lands and facilities.

(c) "Development and land use of regional benefit" includes land use and private development for which there is a demonstrable need affecting the interests of constituents of more than one local government which outweighs the benefits of any applicable restrictive or exclusionary local regulations.

(d) "State" includes the 50 States of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

PROGRAM DEVELOPMENT GRANTS

Section 103. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to make not more than two annual grants to each State to assist that State in developing a land use program meeting the requirements set forth in section 104 of this Act. Such grants shall not exceed 50 percent of the costs of program development. Prior to making the first grant, the Secretary shall be satisfied that such grant will be used in development of a land use program meeting the requirements set forth in section 104. Prior to making a second grant, the Secretary shall be satisfied that the State is adequately and expeditiously proceeding with the development of a land use program meeting the requirements of section 104.

(b) States receiving grants pursuant to this section shall submit to the Secretary not later than 1 year after the date of award of the grant a report on work completed toward the development of a State land use program. A State land use program meeting the requirements of section 104 of this Act shall satisfy the requirements for such a report.

(c) The authority to make grants under this section expires three years from date of enactment.

PROGRAM MANAGEMENT GRANTS

Section 104. Following his review of a State's land use program, the Secretary is authorized to make a grant to that State to assist it in managing the State land use program. Successive grants for this purpose may be made annually to any State resubmitting its land use program for review by the Secretary.

Grants made pursuant to this section shall not exceed 50 percent of the cost of managing the land use program. Grants authorized by this section shall be made by the Secretary only if, in his judgment:

(a) the State's land use program includes:

(1) a method for inventorying and designating areas of critical environmental concern;

(2) a method for inventorying and designating areas impacted by key facilities;

(3) a method for exercising State control over the use of land within areas of critical environmental concern and areas impacted by key facilities including a method for exercising State control over the site location and the location of major improvements and major access features of key facilities;

(4) a method for assuring that local regulations do not restrict or exclude development and land use of regional benefit;

(5) a policy for influencing the location of new communities and a method for assuring appropriate controls over the use of land around new communities;

(6) a method for controlling proposed large-scale development of more than local significance in its impact upon the environment;

(7) a system of controls and regulations pertaining to areas and developmental activities previously listed in this subsection which are designed to assure that any source of air, water, noise or other pollution will not be located where it would result in a violation of any applicable air, water, noise or other pollution standard or implementation plan;

(8) a method for periodically revising and updating the State land use program to meet changing conditions; and

(9) a detailed schedule for implementing all aspects of the program.

For purposes of complying with paragraphs (1)-(7) of this subsection (a), any one or a combination of the following general techniques is acceptable: (i) State establishment of criteria and standards subject to judicial review and judicial enforcement of local implementation and compliance; (ii) direct State land use planning and regulation; (iii) State administrative review of local land use plans, regulations and implementation with full powers to approve of disapprove.

(b) In designating areas of critical environmental concern, the State has not excluded any areas of critical environmental concern to the Nation.

(c) In controlling land use in areas of critical environmental concern to the Nation, the State has procedures to prevent action (and, in the case of successive grants, the State has not acted) in substantial disregard for the purposes, policies and requirements of its land use program.

(d) State laws, regulations and criteria affecting areas and developmental activities listed in subsection (a) of this section are in accordance with the policy, purpose and requirements of this Act; and that State laws, regulations and criteria affecting land use in the coastal zone and estuaries further take into account:

(1) the aesthetic and ecological values of wetlands for wildlife habitat, food production sources for aquatic life, recreation; sedimentation control, and shoreland storm protection; and

(2) the susceptibility of wetlands to permanent destruction through draining, dredging, and filling, and the need to restrict such activities.

(e) The State is organized to implement its State land use program.

(f) The State land use program has been reviewed and approved by the Governor.

(g) The Governor has appropriate arrangements for administering the land use program management grant.

(h) The State, in the development, revision, and implementation of its land use program, has provided for adequate dissemination of information and for adequate public notice and public hearings.

(i) The State has: (1) coordinated with metropolitanwide plans existing on January 1 of the year in which the State use program is submitted to the Secretary, which plans have been developed by an areawide agency designated pursuant to regulations established under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966;

(2) coordinated with appropriate neighboring States with respect to lands and waters in interstate areas;

(3) taken into account the plans and programs of other State agencies and of Federal and local governments.

(j) The State utilizes for the purpose of furnishing advice to the Federal Government as to whether Federal and Federally-assisted projects are consistent with the State land use program, procedures established pursuant to Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968.

FEDERAL REVIEW OF GRANT APPLICATIONS AND STATE LAND USE PROGRAMS.

Section 105. (a) The Secretary before making a program management grant pursuant to section 104. shall consult with the heads of all Federal agencies which conduct or participate in construction, development or assistance programs significantly affecting land use in the State, and shall consider their views and recommendations. The Secretary shall not approve a grant pursuant to section 104 until he has ascertained that the Secretary of Housing and Urban Development is satisfied with those aspects of the State's land use program dealing with large-scale development, key facilities, development and land use of regional benefit, and new communities meet the requirements of section 104 for funding of a program management grant.

(b) The Secretary shall take final action on a State's application for a grant authorized under section 104 not later than six months following receipt for review of the State's land use program.

CONSISTENCY OF FEDERAL ACTIONS WITH STATE LAND USE PROGRAMS

Section 106. (a) Federal projects and activities significantly affecting land use shall be consistent with State land use programs funded under section 104 of this Act except in cases of overriding national interest. Program coverage and procedures provided for in regulations issued pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968 shall be applied in determining whether Federal projects and activities are consistent with State land use programs funded under section 104 of this Act.

(b) After December 31, ~~1974~~ 1975, or the date the Secretary approves a grant under section 104, whichever is earlier, Federal agencies submitting statements required by Section 102(2)(C) of the National

Environmental Policy Act shall include a detailed statement by the responsible official on the relationship of proposed actions to any applicable State land use program which has been found eligible for a grant pursuant to section 104 of this Act.

FEDERAL ACTION IN THE ABSENCE OF STATE LAND USE PROGRAMS

Section 107. (a) Where any major Federal action significantly affecting the use of non-Federal lands is proposed after December 31, 1974, in a State which has not been found eligible for a program management grant pursuant to section 104 of this Act, the responsible Federal agency shall hold a public hearing in that State at least 180 days in advance of the proposed action concerning the effects of the action on land use taking into account the relevant consideration set out in section 104 of this Act, and shall make findings which shall be submitted for review and comment by the Secretary, and where appropriate, by the Secretary of Housing and Urban Development. Such findings of the responsible Federal agency and comments of the Secretary or the Secretary of Housing and Urban Development shall be part of the detailed statement required by Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 et seq.). This section shall be subject to exception where the President determines that the interests of the United States so requires.

(b) Section 15 of the Airport and Airway Development Act (P.L. 91-258, 84 Stat. 227) is amended by adding the following new subsection:

(d) Any State which has not been found eligible for a management grant under section 104 of the National Land Use Policy Act by June 30, 1975, shall suffer a reduction of 7% of its entitlement to Federal funds apportioned for airport development pursuant to paragraphs (A) and (B) of subsection (a)(1) and paragraphs (A) and (B) of subsection (a)(2) of this section, in fiscal year 1976. If that State has not been found eligible by June 30, 1976, it shall suffer a reduction of 14% in fiscal year 1977, and if not found eligible by June 30, 1977, shall suffer a reduction of 21% in fiscal year 1978. Any funds so withheld shall be included in the aggregate of airport and airway development funds and shall be made available to States found eligible for financial assistance under section 104 of the National Land Use

Policy Act according to the criteria prescribed for the apportionment of such funds, excluding for purposes of computation any State or States found ineligible for financial assistance under section 104 of the National Land Use Policy Act.

(c)(1) Section 104, title 23 of the United States Code is amended by adding the following subsection:

(f) Any State which has not been found eligible for a management grant under section 104 of the National Land Use Policy Act by June 30, 1975, shall suffer a reduction of 7% of its entitlement to Federal-aid highway funds exclusive of planning and research which would otherwise be apportioned to such State in fiscal year 1976. If that State has not been found eligible by June 30, 1976, it shall suffer a reduction of 14% in fiscal year 1977, and if not found eligible by June 30, 1977, shall suffer a reduction of 21% in fiscal year 1978. Any funds so withheld shall be included in the aggregate of Federal-aid highway funds and shall be made available to States found eligible for assistance under section 104 of the National Land Use Policy Act according to criteria prescribed for the apportionment of Federal-aid highway funds, excluding for purposes of computation any State or States found ineligible for financial assistance under section 104 of the National Land Use Policy Act.

(c)(2) Section 109(f), title 23 of the United States Code is amended by deleting "or control of" in the first sentence.

(d) Subsection 5(b) of the Land and Water Conservation Fund Act of 1965 (P.L. 88-578, 78 Stat. 897) is amended by adding after the second paragraph the following paragraph:

Any State which has not been found eligible for a management grant under section 104 of the National Land Use Policy Act by June 30, 1975, shall suffer a reduction of 7% of its entitlement under paragraphs (1) and (2) of this subsection in fiscal year 1976. If that State has not been found eligible by June 30, 1976, it shall suffer a reduction of 14% in fiscal year 1977, and if not found eligible by June 30, 1977, shall suffer a reduction of 21% in fiscal year 1978. Any funds so withheld shall be included in the aggregate of land and water conservation funds and shall be made available according to the criteria prescribed for the apportionment of such funds, excluding for purposes of computation any State or States found ineligible for financial assistance under Section 104 of the National Land Use Policy Act.

AVAILABILITY OF FEDERAL EXPERTISE

Section 108. (a) The Secretary shall provide advice upon request to States concerning the designation of areas of critical environmental concern to the Nation.

(b) Federal agencies with data or expertise relative to land use and conservation shall take appropriate measures; subject to appropriate arrangements for payment or reimbursement, to make sure data or expertise available to States for use in preparation, implementation, and revision of State land use programs.

GUIDELINES

Section 109. The President is authorized to designate an agency or agencies to issue guidelines to the Federal agencies to assist them in carrying out the requirements of this Act.

ALLOCATION OF FUNDS

Section 110. (a) Funds for grants authorized by sections 103 and 104 of this Act shall be allocated to the States based on regulations issued by the Secretary which shall take into account State population and growth; nature and extent of coastal zones and estuaries and other areas of critical environmental concern and other relevant factors.

(b) No grant funds shall be used to acquire real property.

(c) A refusal by the Secretary to provide a program development or program management grant authorized by this Act shall be in writing.

MISCELLANEOUS

Section 111. (a) The Secretary shall develop, after appropriate consultation with other interested parties, both Federal and non-Federal, such rules and regulations covering the submission and review of applications for grants authorized by sections 103 and 104 as may be necessary to carry out the provisions of this Act.

(b) A State receiving a grant under the provisions of section 103 or 104 of this Act, the agency designated by the Governor to administer such grant, and State agencies allocated a portion of a grant shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal funds and the operation of the approved management program as the Secretary may require, and shall keep and make available such records as may be required by the Secretary for the verification of such reports and evaluations.

(c) The Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of a grant recipient that are pertinent to the grant received under the provisions of section 103 or 104 of this Act.

(d) Nothing herein shall be interpreted to extend the territorial jurisdiction of any State.

(e) Nothing herein shall be construed to imply Federal consent to or approval of any State or local actions which may be required or prohibited by other Federal statutes or regulations.

APPROPRIATION AUTHORIZATION

Section 112. (a) There are hereby authorized to be appropriated not to exceed $20,000,000 in each fiscal year, ~~1972~~ 1973 through ~~1976~~ 1977, for grants authorized by sections 103 and 104 of this Act, such funds to be available until expended.

(b) There are hereby authorized to be appropriated such sums as may be necessary for the Secretary of the Interior and the Secretary of Housing and Urban Development to administer the program established by this Act.

SECTION-BY-SECTION ANALYSIS

The proposed bill would establish a National Land Use Policy to encourage the States to plan and regulate land use in certain critical areas.

Section 101 - declares Congressional findings that present State and local institutional arrangements for planning and regulating land use are inadequate and have resulted in haphazard land development and the loss of important environmental values. It is in the national interest to encourage and assist the States in strengthening the institutional framework for planning and controlling the use of non-Federal lands.

Section 102 - contains definitions. "Areas of critical environmental concern" are areas where uncontrolled development could result in irreversible damage to important values. Such areas include coastal zones and estuaries and other similar areas. "Key facilities" are public facilities which tend to induce develment of more than local impact, such as airports and highway interchanges. "Development and land use of regional benefit" means private development, the regional need for which outweighs a local conflicting interest.

Section 103 - authorizes the Secretary of the Interior to make two successive annual grants of up to 50% of the cost to States of developing a land use program. Prior to receiving the second grant, the State must submit a report of its progress in developing a program.

Section 104 - authorizes the Secretary to make grants of up to 50% of the cost to States of managing their land use program. Such grants will be made only if the State program, in the Secretary's judgment, meets certain specified criteria. It must include methods for inventorying, designating and exercising State control over areas of critical environmental concern and areas impacted by key facilities, including the site location of such facilities themselves, a method for assuring that local regulations do not restrict land use and private development of regional benefit, a policy for influencing the location of new communities, a method for controlling the use of land around new communities, a method for controlling proposed large-scale development of more than local impact on the environment and a detailed schedule for implementing all aspects of the program. The program must not exclude areas of critical environmental concern to the Nation and must take into account the unique values and fragile nature of coastal zones and estuaries, particularly coastal wetlands. The program must also meet certain other organizational and procedural requirements.

Section 105 - requires the Secretary to consult with Federal agencies with activities or programs affecting land use before making a program management grant. The Secretary shall not approve such a grant unless the Secretary of Housing and Urban Development is satisfied that those aspects of the State land use program dealing with large-scale development and key facilities, development and land use of regional benefit, and new communities meet the requirements of section 104. The Secretary shall act on a program management grant application within 6 months after receipt of the State's land use program.

Section 106 - establishes a requirement for consistency of Federal projects and activities with State land use programs. It also requires that Federal agencies submitting environmental statements pursuant to the National Environmental Policy Act include a detailed statement of the relationship of the proposed Federal action to any applicable State land use program which has been found eligible for a management grant.

Section 107 - requires that where a State has not been found eligible for a management grant, any major Federal action significantly affecting the use of non-Federal lands proposed after December 31, 1975, must be preceded by a public hearing at least 180 days before the proposed action, followed by detailed findings upon which the Secretaries of the Interior or Housing and Urban Development will be allowed to comment, unless the President determines that the interests of the United States are to the contrary.

This section also amends the Airport and Airway Development Act (P.L. 91-258, 84 Stat. 227), the Federal Highway Act (23 U.S.C. § 104), and the Land and Water Conservation Fund Act (P.L. 88-578, 78 Stat. 897) to provide for annual incremental 7% cutbacks in airport development funds, Federal-aid highway funds, and land and water conservation funds, respectively, beginning in fiscal year 1976, for any State which has not been found eligible for a management grant under section 104 by June 30 of 1975 or succeeding years.

Section 108 - authorizes the Secretary to provide advice upon request to States about areas of critical environmental concern to the Nation and directs Federal agencies to share pertinent expertise with the States.

Section 109 - authorizes the President to designate an agency to issue guidelines to assist Federal agencies carrying out the responsibilities under the Act.

Section 110 - authorizes the Secretary to allocate grant funds to the States on the basis of State population and growth, extent of coastal areas and areas of critical environmental concern and other relevant factors. No grant funds shall be used by the State to acquire real property.

Section 111 - authorizes the Secretary to develop, in consultation with other interested parties, rules and regulations covering the submission and review of grant applications and to require reports concerning the status and operation of the program. It requires that certain records be kept and authorizes the Secretary and the Comptroller General to audit and examine such records. It further provides that nothing in this Act shall extend State territorial jurisdiction or be construed to conflict with other Federal statutes or regulations.

Section 112 - authorizes the appropriation of $20 million in each fiscal year 1973 through 1977 for grants to States. It further authorizes the appropriation of such sums as necessary for the Departments of the Interior and Housing and Urban Development to administer the program.

Tax Incentives To Preserve Coastal Wetlands[*]

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[*] This proposed legislation also includes proposals made by the President in his 1971 Environmental Message related to rehabilitation of structures, historic preservation, and charitable donations of land.

OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

February 24, 1972

Dear Mr. [President/Speaker]:

In accordance with the President's Message of February 8, 1972, with respect to environmental legislation, I am enclosing a draft bill entitled the "Environmental Protection Tax Act of 1972", along with a section-by-section analysis, for consideration by the Congress.

The proposed legislation is designed to preserve the nature of our coastal wetland areas by generally reducing the Federal income tax benefits related to investments and improvements in those areas. The bill would additionally encourage greater rehabilitation, rather than demolition, of older buildings in our urban areas. The legislation is similarly designed to make restoration of historic structures more appealing to private investors. Finally, the bill modifies certain restrictions on the deductibility of charitable gifts of partial interests in lands to be used for conservation purposes.

These proposals are described in more detail in the accompanying materials. It would be appreciated if you would lay the proposed legislation before the [Senate/House of Representatives]. A similar communication has been addressed to the [President of the Senate/Speaker of the House].

We have been advised by the Office of Management and Budget that there is no objection to the presentation of this draft bill to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely yours,

/s/ John B. Connally

The Honorable
Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

The Honorable
Carl Albert
Speaker of the House
  of Representatives
Washington, D.C. 20515

Enclosures

A BILL

"To amend the Internal Revenue Code of 1954 to encourage the preservation of coastal wetlands, open space and historic buildings and to encourage the preservation and rehabilitation of all structures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I. SHORT TITLE, ETC.

Sec. 101. SHORT TITLE.--This Act may be cited as the "Environmental Protection Tax Act of 1972."

Sec. 102. AMENDMENT OF 1954 CODE.--Whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE II. PRESERVATION OF COASTAL WETLANDS

Sec. 201. DEPRECIATION OF IMPROVEMENTS ON HISTORIC SITES AND IN COASTAL WETLANDS

(a) Section 167 (relating to depreciation) is amended by redesignating subsection "n" as subsection "p", and by inserting after subsection "m" the following new subsection:

"(n) Straight line method in certain cases.

(1)--In General. In the case of any property in whole or in part constructed, reconstructed, erected, or used--

- (A) in coastal wetlands (as defined in section 7701(a) (35)), or
- (B) on a site which was, on or after February 8, 1972, occupied by a certified historic structure (as defined in section 189(d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 189(d)(2)) after such date,

subsections (b), (j), (k), and (l) shall not apply, and the term "reasonable allowance" as used in subsection (a) shall mean only an allowance computed under the straight line method.

(2) Exception. The limitations imposed by this subsection shall not apply to property which is not affixed to land or improvements, or to property which is a certified coastal wetlands improvement (as defined in section 7701(a)(36))."

(b) The amendment made by this section shall apply to property placed in service after December 31, 1972.

Sec. 202. RECAPTURE ON DISPOSITION OF PROPERTY--Section 1245 (relating to gain from disposition of certain depreciable property) is amended as follows:

(a) In section 1245(a)(2) strike out "or" at the end of subparagraph (C); delete the period and insert "or" at the end of subparagraph (D); and immediately thereafter add a new subparagraph (E) to read as follows:

"(E) with respect to any property referred to in paragraph (3)(E), its adjusted basis recomputed by adding thereto all adjustments"

(b) In section 1245(a)(3), strike out "or" at the end of subparagraph (C), delete the period and insert ",or" at the end of subparagraph (D), and immediately thereafter add a new subparagraph (E) to read as follows:

"(E) property placed in service in coastal wetlands after December 31, 1972 (other than certified coastal wetlands improvements)."

Sec. 203. SOIL AND WATER CONSERVATION EXPENDITURES AND LAND CLEARING EXPENDITURES.

(a) Section 175(c)(1) (relating to soil and water conservation expenditures) is amended--

(1) by striking out "or" at the end of subparagraph (A), by striking out "section" and inserting in lieu thereof, "section, or" at the end of subparagraph (B), and by inserting immediately after subparagraph (B) a new subparagraph (C) to read as follows:

"(C) any amount paid or incurred with respect to coastal wetlands (other than amounts paid or incurred with respect to certified coastal wetlands improvements)."

(2) by striking out "preceding sentences." in the flush material immediately following new subparagraph (C) and inserting in lieu thereof, "preceding sentences, except as provided in subparagraph (C)."

(b) Section 182(d)(1) (relating to expenditures by farmers for clearing land) is amended by striking out "or" at the end of subparagraph (A), by striking out "section" and inserting in lieu thereof "section, or" at the end of subparagraph (B), and by adding a new subparagraph (C) at the end thereof to read as follows:

"(C) any amount paid or incurred with respect to coastal wetlands (other than amounts paid or incurred with respect to certified coastal wetlands improvements)."

(c) The amendments made by this section shall apply to taxable years beginning after December 31, 1972.

Sec. 204. CARRYING CHARGES ON COASTAL WETLANDS PROPERTY. (a) Part IX of subchapter B of Chapter 1 (relating to items not deductible) is amended by adding after section 279 the following new section:

"Sec. 280. Carrying Charges on Coastal Wetlands Property.

(1) In general.--Deductions for the taxable year of amounts otherwise allowable under section 163 or 164, or under section 162 to the extent such amounts would also have been allowable under section 163 or 164, which are attributable to land under development and associated improvements in the coastal wetlands (other than land and associated improvements which are certified coastal wetlands improvements) shall be allowed only to the extent of net income derived from such coastal wetlands. If for any taxable year such deductions exceed such income, the excess shall be charged to capital account.

"(2) Net income from coastal wetlands.--For purposes of this section, "net income from coastal wetlands" means gross income for the taxable year derived from land under development, and associated improvements in the coastal wetlands (other than land and associated improvements which are certified coastal wetlands improvements), reduced by all deductions directly connected with the production of such income, other than items of deduction described in section 163 or 164."

(b) The amendment made by this section shall apply to taxable years beginning after December 31, 1972.

(c) The table of sections for Part IX of subchapter B of Chapter 1 is amended by adding at the end thereof:

"Sec. 280. Carrying Charges on Coastal
Wetlands Property."

Sec. 205. DEFINITION OF COASTAL WETLANDS. Section 7701(a) (relating to definitions) is amended by adding after paragraph (34 the following new paragraph:

"(35) Coastal Wetlands.--The term "coastal wetlands" means those areas of open water, marsh, swamp, or other coastal wetlands which--

(A) correspond to Types 12 through 20 identified in Circular 39 of the Fish and Wildlife Service, U.S. Department of the Interior,

(B) are of biological significance due to their production of or capacity to produce vegetation and other types of living organisms important to the maintenance of the ecology of the coastal zone,

(C) are influenced by tidal water, and

(D) lie shoreward within the territorial sea of the three fathom depth line as shown on National Oceans Survey Marine Charts,

and which are certified to the Secretary or his delegate as falling within the above definition by the Secretary of the Interior with the approval of the Secretary of Commerce.

(b) Certified Coastal Wetlands Improvements. Section 7701(a) (relating to definitions) is amended by adding after paragraph (35) the following new paragraph:

"(36) Certified Coastal Wetlands Improvement-The term "certified coastal wetlands improvement" means any improvement, change or other alteration to coastal wetlands which the Secretary of the Interior, with the approval of the Secretary of Commerce, has certified to the Secretary or his delegate--

(A) as not being in conflict with applicable regulations of Federal and state agencies relating to the protection of the coastal wetlands, and

(B) as not requiring an environmentally undesirable degree of draining, dredging or filling in the coastal wetlands affected."

TITLE III - HISTORIC PRESERVATION

Sec. 301. AMORTIZATION OF REHABILITATION EXPENDITURES. (a) Part VI of subchapter B of Chapter 1 (relating to itemized deductions) is amended by adding at the end thereof the following new section:

"Sec. 189--Amortization of Certain Rehabilitation Expenditures for Certified Historic Structures--

"(a) Allowance of Deduction.--Every person at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified historic structure (as defined in subsection (d)) based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such basis for such month provided by section 167. The 60-month period shall begin, as to any historic structure, at the election of the taxpayer, with the month following the month in which the basis is acquired, or with the succeeding taxable year.

"(b) Election of Amortization.--The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the basis is acquired, or with the taxable year succeeding the taxable year in which such basis is acquired, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

"(c) Termination of Amortization Deduction.--A taxpayer who has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such certified historic structure.

"(d) Definitions.--For purposes of this section--

"(1) Certified historic structure. The term "certified historic structure" means a building or structure subject to the allowance for depreciation provided in Section 167 which--

(A) is listed in the National Register, or

(B) is located in a Registered Historic District and is certified by the Secretary of the Interior or his delegate as being of historic significance to the District.

"(2) Certified rehabilitation. The term "certified rehabilitation" means any rehabilitation of a certified historic structure of of any other structure located in a Registered Historic District, which the Secretary of the Interior or his delegate has certified as being consistent with the historic character of such property or district.

"(3) Amortizable basis. The term "amortizable basis" means the portion of the basis attributable to additions to capital account which--

(i) are amounts expended for certified rehabilitation, and

(ii) are described in section 167(o)(2).

"(e) Depreciation deduction.--The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

"(f) Life Tenant and Remainderman.--In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

"(g) Cross Reference.--(1) For rules relating to the listing of buildings and structures in the National Register and for definitions of "National Register" and "Registered Historic District", see section 470 et seq. of Title 16 of the United States Code.

(2) For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1238."

(b) Gain on disposition of registered structures. Section 1238 (relating to amortization in excess of depreciation) is amended to read as follows:

"Sec. 1238. Amortization in excess of Depreciation.--Gain from the sale or exchange of property, to the extent that the adjusted basis of such property is less than its adjusted basis determined without regard to section 168 or 189, shall be considered as ordinary income."

(c) Conforming Amendments.--

(1) The table of sections for Part VI of subchapter B of Chapter 1 is amended by inserting at the end thereof the following new item.

"Sec.189. Amortization of rehabilitation expenditures on certified historic structures."

(2) The heading and first sentence of section 642(f) (relating to special rules for credits and

deductions of estates and trusts) are amended to read as follows:

"(f) Amortization deductions.--The benefit of the deductions for amortization provided by sections 168, 169, 184, 187, 188, and 189 shall be allowed to estates and trusts in the same manner as in the case of an individual.

(3) Section 1082(a)(2)(B) (relating to basis for determining gain or loss) is amended by striking out "or 188;" and inserting in lieu thereof "188, or 189;".

(4) Section 1250(b)(3) (relating to depreciation adjustments) is amended by striking out "or 188)."

(d) Effective date.--The amendments made by this section shall apply with respect to additions to capital account made after February 8, 1972.

Section 302. DEMOLITION.

(a) Disallowance of Deductions. Part X of subchapter B of Chapter 1 (relating to terminal railroad corporations and their shareholders) is amended by redesignating section 281 as section 291 and part IX of such subchapter (relating to items not deductible) is amended by adding after section 280 the following new section:

"Sec. 281. Demolition of Certain Historic Structures.

"(a) General Rule. In the case of the demolition of a certified historic structure described in section 189(d)(1) (but without regard to paragraph (C) of that section)--

"(1) no deduction otherwise allowable under this chapter shall be allowed to the owner or lessee of such structure for--

"(A) any amount expended for such demolition, or

"(B) any loss sustained on account of such demolition.

"(2) Amounts described in paragraph (1) shall be treated as property chargeable to capital account with respect to the land on which the demolished structure was located.

"(b) Special Rule for Registered Historic Districts. For purposes of this section, any building or other structure located in a Registered Historic District shall be treated as a "certified historic structure" unless the Secretary of the Interior or his delegate has certified, prior to the demolition of such structure, that such structure is not of historic significance to the District."

(b) Effective Date.--The amendments made by this section shall apply with respect to demolitions commencing after the date of enactment of this bill.

(c) Conforming Amendments.

(1) The table of sections for part X of subchapter B of chapter 1 (relating to terminal railroad corporations and their shareholders) is amended by redesignating "Sec. 281" as "Sec. 291".

(2) The table of sections for part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new item:

"Sec. 281. Demolition of Certain historic structures."

TITLE IV - REHABILITATION

Sec. 401. SUBSTANTIALLY REHABILITATED PROPERTY.

(a) Section 167 (relating to depreciation) is amended by inserting after subsection (n) the following new subsection:

"(o) Substantially Rehabilitated Property.

"(1) General Rule.--Pursuant to regulations prescribed by the Secretary or his delegate, the taxpayer may elect to compute the depreciation deduction attributable to substantially rehabilitated property as though the original use of such property commenced with him.

"(2) Substantially rehabilitated property.--The term "substantially rehabilitated property" means property which is of a character subject to the allowance for depreciation under section 167, and is property described in section 1250 with respect to which the additions to capital account during the 24-month period ending on the last day of any taxable year, reduced by any amounts allowed or allowable as depreciation or amortization allowable thereto, exceeds the greater of--

(A) the adjusted basis of such property, or

(B) $5,000.

The adjusted basis of the property shall be determined as of the beginning of the first day of such 24-month period, or of the holding period of the property (within the meaning of section 1250(c)), whichever is later."

(b) Effective Date. The amendment made by this section shall apply with respect to additions to capital account occurring after June 30, 1973.

TITLE V. CHARITABLE TRANSFERS FOR CONSERVATION PURPOSES.

Section 501. TRANSFERS OF PARTIAL INTERESTS IN PROPERTY FOR CONSERVATION PURPOSES.

(a) Income tax deductions for charitable contributions of partial interests in property for conservation purposes.--Sec. 170(f)(3) (relating to charitable contributions) is amended--

(1) by striking out "or" at the end of subparagraph (b)(i),

(2) by striking out "property.", at the end of subparagraph (b)(ii) and inserting in lieu thereof "property,"

(3) by adding after clause (ii) of subparagraph (b) the following new clauses:

"(iii) a lease on, option to purchase, or easement with respect to real property of not less than 15 years duration granted to an organization described in subsection (b)(1)(A) exclusively for conservation purposes, or

"(iv) a remainder interest in real property which is granted to an organization described in subsection (b)(1)(A) exclusively for conservation purposes." and

(4) by adding at the end thereof the following new subparagraph:

"(C) Conservation Purposes Defined.--For purposes of subparagraph (B), the term "conservation purposes" means--

(i) the preservation of land areas for public outdoor recreation or education, or scenic enjoyment;

(ii) the preservation of historically important land areas or structures;

or

(iii) the protection of natural environmental systems."

(b) Estate Tax Deduction for Transfers of Partial Interests in Property for Conservation Purposes.--Section 2055(e)(2) (relating to deductions from gross estate) is amended by striking out "(other than a remainder interest in a personal residence or farm or an undivided portion of the decedent's entire interest in property)" and inserting in lieu thereof "(other than an interest described in § 170(f)(3)(B))."

(c) Gift tax deduction for transfers of partial interests in property for conservation purposes.--Section 2522(c)(2) (relating to deductions from taxable gifts) is amended by striking out "(other than a remainder interest in a personal residence or farm or an undivided portion of the donor's entire interest in property)" and inserting in lieu thereof "(other than an interest described in § 170(f)(3)(B))".

(d) Effective.date.--The amendments made by this section shall apply with respect to contributions and transfers made after February 8, 1972.

SECTION-BY-SECTION ANALYSIS

TITLE I SHORT TITLE, ETC.

Title I labels the Act as the "Environmental Protection Tax Act of 1972," and specifies that all amendments contained in the Act are amendments to the Internal Revenue Code.

TITLE II PRESERVATION OF COASTAL WETLANDS

Section 201

Section 201 adds a new subsection (n) to section 167 of the Code, providing that the depreciation deduction for property constructed, reconstructed or erected in the coastal wetlands may be computed only by use of the straight-line method of depreciation. A similar rule is applied in the case of buildings constructed on sites where a registered historic structure has been demolished.

The limitation of depreciation methods will apply with respect to property placed in service after December 31, 1972.

Section 202

Section 202 amends section 1245 of the Code to provide that gain on the disposition of improvements located in coastal wetlands will be treated as ordinary income to the extent of all depreciation deductions claimed with respect to such improvements. This amendment will apply to dispositions of property placed in service in the coastal wetlands after December 31, 1972.

Section 203

Section 203 of the bill adds a new subparagraph C to sections 175(c)(1) and 182(d)(1) of the Code, providing, in effect, that certain land clearing expenditures and certain soil and water conservation expenditures (such as expenses for draining, dredging or filling) with regard to coastal wetlands are not deductible under the special rules of Code sections 175 and 182. Thus, these expenses would have to be capitalized.

Disallowance of deductions for these expenditures would apply to taxable years beginning after December 31, 1972.

Section 204

Section 204 of the bill adds a new section 280 to the Code, providing in effect that no deduction for interest and taxes will be allowed where it is attributable to land under development and associated improvements in the coastal wetlands. However, these deductions would be allowed to the extent of any income derived from such coastal wetlands. The amount of such disallowed deductions is to be charged to the capital account.

This section will apply to taxable years beginning after December 31, 1972.

Section 205

Section 205 of the bill defines coastal wetlands as areas of open water, marsh, swamp, etc., corresponding to types 12 through 20 in Circular No. 39 of the Fish and Wildlife Service of the U.S. Department of Interior, which are of biological significance, are influenced by tidal water, and which lie shoreward within the territorial sea of the three fathom depth line as shown on National Oceans Survey Marine Charts. It is further provided that the Secretary of the Interior, after consultation with the Secretary of Commerce, will provide the Secretary of the Treasury with a detailed description (in the form of maps) of lands which fall within this definition.

Section 205 also defines certified wetlands improvements which will be exempt from the provisions of the Act. Certification requires a finding by the Secretaries of the Interior and Commerce that the improvement does not conflict with regulations and does not require an environmentally undesirable degree of draining, dredging, or filling.

TITLE III HISTORIC PRESERVATION

Title III contains provisions intended to encourage preservation of historic buildings and structures certified by the Secretary of the Interior as registered or qualified for registration on the National Registry. In addition to the provisions of Title III, Section 201 of the Bill limits depreciation to the straight-line method in the case of buildings constructed on sites which were formerly occupied by demolished historic structures.

Section 301

Section 301 adds a new section 189 to the Code, permitting a 5-year write-off of rehabilitation expenditures incurred with respect to historic structures which are used in the taxpayer's trade or business or held for the production of income provided that property acquired in connection with such expenditure is otherwise eligible for the depreciation allowance.

On the disposition of a certified historic structure, gain would be treated as ordinary income to the extent that the special write-off provided under this section exceeded the depreciation deduction which would have otherwise been allowable (without regard to this provision). This section would apply with respect to all expenditures made after February 8, 1972.

Section 302.

Section 302 would add a new section 281 to the Code (while redesignating the present section 281 as section 291). Under the new section 281, no deduction would be allowed for amounts expended in the demolition of a registered historic structure, or for the undepreciated cost of such a structure. Both items would have to be allocated to the basis of the land. The section would apply to all demolitions occurring after the date of enactment.

TITLE IV REHABILITATION

Section 401

Section 401 would add a new subsection (o) to the general depreciation rules of section 167. Under this new provision, if a taxpayer substantially rehabilitated depreciable property, he would be permitted to elect to compute depreciation with respect to his pre-existing basis in the building as though the entire structure was first placed in service by him. This will permit a taxpayer who purchases a used building and rehabilitates it to utilize so-called accelerated methods of depreciation, a privilege which is not now accorded taxpayers under the law.

In order to qualify for this special treatment, the amounts added to capital account during a 24-month period must be at least $5,000 in amount and must be greater than the undepreciated cost of the property, determined at the beginning of the 24-month period. The provision is effective with respect to such expenditures incurred after June 30, 1973.

TITLE V. CHARITABLE TRANSFERS FOR CONSERVATION PURPOSES

Title V provides several amendments to the chari-

charitable contribution provisions in section 170 of the Code, the effect of which is to permit a charitable contribution deduction for certain types of transfers which are not presently allowed under the law. Specifically, section 501(a) provides that a charitable deduction will not be denied on the transfer of a partial interest in property, where the interest is either an easement of 15 or more years duration granted exclusively for conservation purposes, or is a remainder interest in real property which is granted exclusively for conservation purposes. "Conservation purposes" mean the preservation of open land areas for public outdoor recreation or education, or scenic enjoyment; the preservation of historically important land areas or structures; or the protection of natural environmental systems.

These amendments would apply with respect to contributions made after February 8, 1972.

Management of Public Lands

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

July 20, 1971

Dear Mr. [President/Speaker]:

Enclosed is a draft bill "To provide for the management, protection, and development of the national resource lands and for other purposes."

We recommend that the proposed bill be referred to the appropriate committee and that it be enacted.

In his message to Congress on the environment early this year, President Nixon stated:

> "The Federal public lands comprise approximately one-third of the Nation's land area. This vast domain contains land with spectacular scenery, mineral and timber resources, major wildlife habitat, ecological significance, and tremendous recreational importance. In a sense, it is the 'breathing space' of the Nation.
>
> "The public lands belong to all Americans. They are part of the heritage and the birthright of every citizen. It is important, therefore, that these lands be managed wisely, that their environmental values be carefully safeguarded, and that we deal with these lands as trustees for the future. They have an important place in national land use considerations."

This bill represents an historic proposal. The Department is proposing legislation which, for the first time, would state the national policies governing the use and management of 450 million acres of the public domain and provides specific guidelines for the management of these vast lands.

Simply put the bill declares a national policy that these lands be managed under the principles of multiple use and sustained yield in a manner which will, using all practicable means and measures, protect the quality of the environment. It is also declared in the national interest that these lands be held in Federal ownership and that disposal be authorized only when the management of the public domain would be significantly improved, or when such disposal would serve important public objectives which cannot be prudently and feasibly achieved on non-Federal lands. This then sets a guiding principle for management in perpetuity.

In a very real sense the story of this country's growth and development is the story of the public domain. At one time the Federal government owned 80% of the present land mass of the United States. Thirty-one States were created out of public domain, railroads, schools, and other public works built, and much of the west was settled by grants of public land. For these and other purposes 1.1 billion acres of some of the richest land in this country was transferred out of Federal ownership.

Although the primary objective of Congress was to get Federal land into private ownership, it also recognized at an early date that certain natural resources should be preserved for the enjoyment of the Nation as a whole and generations to come. In 1872 Yellowstone National Park was created. In succeeding years, 18 million acres of public land became National Parks, 160 million acres became National Forests, and 2.3 million acres became wildlife refuges.

Today roughly 450 million acres of public domain remain without specific statutory designation. And while the Nation has come to regard this land as a permanent national asset to be, for the most part, retained and managed on a multiple use, sustained yield basis, the basic management tools available for this purpose remain those that were forged when Federal ownership was expected to be short-lived, and when the Federal role was that of a temporary custodian.

From 1812 to 1946 the principal custodian of the public land was the General Land Office. Its jobs was primarily to survey the land and convey it to successful applicants.

In 1934, the Taylor Grazing Act brought a measure of protection and management to the unreserved public domain. Among other things, this Act authorized the establishment of grazing districts to provide more orderly use of the public range lands. The Grazing Service was created to administer the grazing district management program. The General Land Office was given authority to classify public lands for disposal.

In 1946 by executive reorganization, the General Land Office and the Grazing Service were merged into the Bureau of Land Management.

Within the Department of the Interior the Bureau of Land Management has the responsibility to manage the 450 million acres of unreserved public land. In addition, BLM has some surface management responsibilities on millions of acres withdrawn for programs of other Federal agencies such as the Bureau of Reclamation, the Bureau of Sport Fisheries and Wildlife, and the Department of Defense. BLM and the Geological Survey have joint responsibilities for administration of the mineral laws on all public domain and acquired lands (including national forests and wildlife refuges), reserved mineral interests -- more than 800,000,000 acres in total -- and on the Outer Continental Shelf. BLM also keeps the basic public land records and does land boundary surveys for most Federal lands. Lands administered by BLM amount to about 60% of all Federal lands.

Despite the enormous responsibilities of the BLM, the definition of its mission and the authority to accomplish it have never been comprehensively enunciated by Congress. Rather its mission and authority must be gleaned from some three thousand land laws which have accumulated over some 170 years and which are often at cross purposes.

In 1964 Congress passed three laws as a first step in the process of placing public land management on an up-to-date, rational basis. The Public Land Law Review Commission Act established a commission to review the entire body of the land laws and administrative practices and recommend modifications in them to best enable the public land to be retained and managed, or disposed of, all for the maximum benefit to the general public. The Classification and Multiple Use Act authorized BLM to classify the public lands for disposal or retention for multiple use management. The Public Land Sale Act allowed sale of public land which was chiefly valuable for certain specified uses. The latter two Acts expired on December 23, 1970.

The Classification and Multiple Use Act and the Public Land Sale Act were intended as interim measures, pending evaluation and possible implementation of the PLLRC recommendations. When they expired on December 23, 1970, the Bureau of Land Management returned to the Taylor Grazing Act of 1934 for its basic classification authority. Since the Taylor Grazing Act does not apply to public lands in Alaska, the Department is without that essential management authority in that State.

During the six year life of the Classification and Multiple Use Act, 177 million acres were classified for multiple use management while roughly 3.5 million acres of land were classified for disposal. Two hundred and sixty two million acres remain unclassified, almost all of which is in Alaska.

The comprehensive management authority we are proposing for the public lands is in accord with many of the recommendations of the Public Land Law Review Commission, and would continue on a permanent basis the concepts approved by Congress in the two Acts which expired on December 23, 1970. It would provide for the first time a clear and comprehensive definition of the Department's mission with respect to these lands.

The proposed act would apply to all lands administered by the Department through the Bureau of Land Management including the revested Oregon and California Railroad

Lands and reconveyed Coos Bay Wagon Road lands to Oregon. It would adopt the name National Resource lands to designate adequately their importance.

The proposed act is designed to provide a broad framework for any legislative proposals dealing with specific uses or resources which may be made in the future. For this reason, it should be an initial step in any legislative program to reform the land laws.

It directs the Secretary of the Interior to inventory the national resource lands and to develop comprehensive land use plans for such lands giving priority to lands in critical environmental areas, which is defined to include among others flood plains, coastal zones and scenic or historic areas. The inventory will give priority to such critical resources as clean burning fossil fuels to assist this Nation's efforts to combat pollution. The identification of the most critical environmental areas will be given a high priority by this Department so that those areas may be given the protection they so urgently need. A thorough knowledge of the resources we possess and purposeful plans for their use will greatly assist us to arrest the destruction we have too long and too carelessly inflicted on our natural resources. The national resource lands are in a real sense our last frontier. We cannot afford to squander their riches.

The proposed bill would repeal the hodge-podge of land disposal laws and replace them with a modern disposal law authorizing the Secretary to sell for fair market value those lands meeting the standards set forth in the proposed bill.

The Mining and Mineral Leasing Laws and certain special purpose land disposal laws, including the Recreation and Public Purposes Act, would not be repealed, although this Act would govern the exercise of Secretarial discretion under those and any other laws.

Equally important to land management is the authority to acquire lands necessary for authorized programs, or for blocking up existing land holdings. One traditional method of doing this, land exchanges, is retained with the modification that where the lands are not of equal value, the value may be equalized by cash payment. This acquisition authority is not intended to initiate a major acquisition program.

The proposed bill would significantly enhance the management of the national resource lands by making violation of laws or regulations pertaining to them a crime and by vesting enforcement authority in certain designated Departmental employees.

The authority granted by the Act would pass to the Secretary of Natural Resources upon establishment of the Department of Natural Resources as proposed by President Nixon. The Act would not affect the present funding of operations on or the distribution of receipts from the national resource lands.

The national resource lands are a priceless and irreplaceable national asset. It is time to provide the Department of the Interior with the tools to manage and preserve them in accordance with their value to the American people.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl B. Albert
Speaker of the House
of Representatives
Washington, D.C. 20515

Enclosure

A BILL

To provide for the management, protection and development of the national resource lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Resource Land Management Act of 1971."

SECTION 2. Definitions. As used in this Act:

(a) "The Secretary" means the Secretary of the Interior.

(b) "National resource lands" means all lands and interests in lands (including the renewable and nonrenewable resources thereof) now or hereafter administered by the Secretary through the Bureau of Land Management, except the Outer Continental Shelf.

(c) "Multiple use" means the management of the natural resource lands and their various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the American people; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of resource uses that takes into account the long term needs of future generations for nonrenewable resources and the achievement of diversity and balance for renewable resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land or undue damage to irreplaceable values, with consideration being given to the relative values of the resources, and not necessarily the combination of uses that will give the greatest economic return or the greatest unit output.

(d) "Sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of land without impairment of the productivity of the land.

(e) "Areas of critical environmental concern" means areas where uncontrolled use or development could result in irreversible damage to: important historic, cultural, or aesthetic values, or natural systems or processes, or life and safety as a result of natural hazards. Such areas shall include:

(1) coastal zones and estuaries: "Coastal zones" means the land, waters, and lands beneath the waters in close proximity to the coastline (including the Great Lakes) and strongly influenced by each other, and include areas influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, sounds, embayments, harbors, lagoons, inshore waters, channels, and all other coastal wetlands. "Estuary" means the part of the mouth of a river or stream or other body of water having unimpaired natural connection with the open sea and within which the sea water is measurably diluted with fresh water derived from land drainage;

(2) shorelands and flood plains of rivers, lakes and streams;

(3) rare or valuable ecosystems;

(4) scenic or historic areas; and

(5) such additional areas of similar valuable or hazardous characteristics which the Secretary determines to be of critical environmental concern.

SECTION 3. Declaration of Policy.

(a) Congress hereby declares that the national resource lands are a vital national asset containing a wide variety of natural resource values and that the national interest will best be served by retaining the national resource lands in Federal ownership except where the Secretary determines that disposal of particular tracts of national resource lands is consistent with the purposes, terms and conditions of this Act.

(b) Congress hereby directs that the Secretary shall manage the national resource lands under principles of multiple use and sustained yield in a manner which will, using all practicable means and measures, protect the environmental quality of the national resource lands to assure their continued value for present and future generations.

SECTION 4.

The use, occupancy or development of any portion of the national resource lands contrary to any regulation of the Secretary of contrary to any order issued pursuant to any such regulations is unlawful and prohibited.

SECTION 5. Inventory.

The Secretary shall prepare and maintain on a continuing basis an inventory of all national resource lands and their resources giving priority to areas of critical environmental concern. This inventory shall reflect changes in conditions and in identifications of resource values.

SECTION 6. Land Use Plans.

(a) The Secretary shall with public participation develop, maintain, and when appropriate, revise land use plans for the national resource lands consistent with the terms and conditions of this Act and coordinated so far as he finds feasible and proper, or as may be required by the National Land Use Policy Act of 1971 or other law, with the land use plans of State and local governments and other Federal agencies.

(b) In the development and maintenance of land use plans, the Secretary shall:

(1) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic and social sciences;

(2) give priority to the designation of areas of critical environmental concern;

(3) rely, to the extent it is available, on the inventory of the national resource lands and their resources;

(4) consider all present and potential uses of the lands;

(5) consider the relative scarcity of the values involved and the availability of alternative means including the need for recycling and sites for realization of those values;

(6) weigh long-term public benefits against more immediate local or individual benefits; and

(7) consider the requirements of applicable pollution control laws including state or Federal air or water quality standards and implementation plans.

SECTION 7. Management.

(a) The Secretary shall manage the national resource lands in accordance with the policies and procedures of this Act and with any applicable land use plans which he has prepared except to the extent that other applicable law requires the Secretary to take specific actions. Such management shall include:

(1) the regulation of all use, occupancy or development, through permits, licenses or such other form of authorization as the Secretary deems appropriate;

(2) requiring land reclamation as a condition of use, and requiring performance bonds guaranteeing such reclamation of any person permitted to engage in extractive or other activity likely to entail significant disturbance to or alteration of the land;

(3) inserting in permits, licenses, or other authorizations to use, occupy or develop the national resource lands provision authorizing revocation or suspension upon violation of any regulations issued by the Secretary under this Act or upon violation of any applicable state or Federal air or water quality standard and implementation plans; and

(4) the prompt development of regulations for the protection of areas of critical environmental concern.

SECTION 8. Sale of Land.

(a) Except as otherwise provided by law, the Secretary is authorized to sell national resource lands when he finds that such sale will (1) lead to a significant improvement in the management of the national resource lands, or (2) serve important public objectives which cannot be achieved prudently and feasibly on land other than national resource lands. Sales of national resource lands under this Act shall be at not less than the appraised fair market value and shall be in accord with land use plans when such plans have been prepared.

(b) The Secretary shall determine and establish the size of tracts to be sold on the basis of the land use capabilities and development requirements of the lands.

(c) Sales of land under this Act shall be conducted under competitive bidding procedures to be established by the Secretary, except that where he determines it necessary and proper (1) to assure fair distribution among purchasers of national resource lands, or (2) to recognize equitable considerations or public policies, including but not limited to a preference right to users, he is authorized to sell national resource lands without competitive bidding, or with modified competitive bidding. In no event shall the lands be sold for less than the appraised fair market value as determined by the Secretary.

(d) Until the Secretary has accepted an offer to purchase, he may refuse to accept any offer or may withdraw any land from sale under this Act when he determines that consummation of the sale would not be in the public interest.

(e) At the end of each fiscal year the Secretary shall report to Congress all sales of national resource lands conducted by him during such fiscal year.

SECTION 9. Conditions in Conveyances.

(a) Except where the Secretary finds that (1) there are no mineral values in the land or (2) reservation of the mineral rights in the United States would interfere with or preclude the appropriate development of the land and that such development is a more beneficial use of the land than mineral development, all conveyances of title issued by the Secretary under this Act shall reserve to the United States all mineral deposits in the lands, together with the right to prospect for, mine, and remove the deposits under applicable law and such regulations as the Secretary may prescribe.

(b) The Secretary shall insert in any patent or other documents of conveyance he issues under this Act such terms, covenants and conditions as he deems necessary to insure proper land use, environmental integrity and protection of the public interest. In the event any area which the Secretary has identified as an area of critical environmental concern is conveyed out of Federal ownership, the Secretary shall provide for the continued protection of such are in the patent or other document of conveyance.

SECTION 10. Acquisition of Land.

(a) When public interests will be benefitted thereby the Secretary is authorized to acquire by purchase, exchange, donation or otherwise such lands or interests therein including, but not limited to, the provision of access by the general public to national resource lands. Such acquisitions shall be consistent with such land use plans as may apply to the area involved.

(b) Purchases designed primarily to provide outdoor recreation opportunities shall be made by the Secretary with funds from the Land and Water Conservation Fund.

(c) In exercising the exchange authority granted by subsection (a) of this section, the Secretary may accept title to any non-Federal land or interests therein and in exchange therefore he may convey to the grantor of such land or interests any national resource lands or interests therein which, under the terms and conditions of this Act, he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land to be acquired. The values of the lands so exchanged either shall be equal, or if they are not equal, the value shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require. When a land use plan has been prepared, exchanges under this Act shall be in accordance with such plans.

(d) Lands acquired by exchange under this section within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture for administration as a part of, and in accordance with laws, rules and regulations applicable to the National Forest System.

SECTION 11. Enforcement Authority.

(a) Violations of regulations which may be adopted for the purpose of protecting the national resource lands, other public property, and the public health, safety and welfare and identified by the Secretary as being subject to the sanctions provided for by this section shall be deemed to be a misdemeanor and shall be punishable by a fine of not more than $10,000 or imprisonment for not more than one year, or both. Any person charged with the violation of such regulations may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in 18 U.S.C. 3401.

(b) At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States or the highest court in a U.S. territory for an injunction or other appropriate order to prevent any person from utilizing the national resource lands in violation of regulations issued under this Act.

(c) The Secretary may designate and authorize employees as special officers who may make arrests or serve citations for acts committed on the public lands which are in violation of regulations identified pursuant to subsection 11(a).

(d) Upon the sworn information by a competent person, any United States Commissioner, magistrate, or court of competent jurisdiction may issue process for the arrest of any person charged with the violation of law or the designated regulations. Nothing herein shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating the law or the designated regulations.

SECTION 12. State's rights not curtailed.

(a) Nothing in this Act shall be construed as a limitation upon any State criminal statute, nor on the police power of the respective States.

(b) Nothing in this section shall be construed to derogate the authority of a local police officer in the performance of his duties.

SECTION 13. Federal rights not curtailed. Nothing in this section shall be construed as limiting or restricting the power and authority of the United States, or as affecting in any way any law governing appropriation or use of, or Federal right to, water on national resource lands.

SECTION 14. All actions by the Secretary under this Act shall be subject to valid existing rights. The Secretary shall not impair or diminish any valid existing rights except under due process and upon payment of just compensation.

SECTION 15. Public Hearings.

(a) In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria in the preparation and execution of plans and programs and in the management of the national resource lands.

(b) Any proposed significant change in land use plans and regulations pertaining to areas of critical environmental concern shall be the subject of a public hearing.

SECTION 16. In providing for public participation in planning and programming for the national resource lands, the Secretary may establish and consult such advisory boards and committees as he deems necessary to secure full information and advice on the execution of his responsibilities.

SECTION 17. The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the Administrative Procedures Act (5.U.S.C. 553).

SECTION 18. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

SECTION 19. Repeal of Prior Laws.

(a) Subject to valid rights existing at the date of approval of this Act, the following statutes or parts of statutes as amended are repealed:

1) Homestead Laws:

Act of:	Sections	Statute	43 U.S.C.
Revised Statutes 2288-2298 2300-2302 2304,2311			161-164, 169, 171, 173-175, 183, 184, 191, 201, 211, 239, 254, 255, 271, 272, 274, 277, 278
Mar. 3, 1875	15	18:420 ch. 131	189
June 3, 1878		20:91	253
March 3, 1879		20:472 ch. 191	204
March 3, 1879		20:472 ch. 192	251
July 1, 1879		21:46	205
July 1, 1879	1	21:48	235
May 14, 1880		21:140	166, 185, 202, 223

June 8, 1880		21:166	172
June 16, 1880		21:287	263
July 4, 1884	last paragraph of section 1 only	23:96	190
May 6		24:22	206
Mar. 2, 1889	1,3,4, 6,7	25:854	214, 234, 252 681, 700
Aug. 30, 1890		26:391	212

The following words of section 1 only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement is validated by this act."

Sept. 30, 1890		26:684	261
Mar. 3, 1893		27:593	275, 1076

The following words only: "And provided further, That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."

* * * *

"Provided, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."

Aug. 18, 1894		28:397	276
Last paragraph of section headed "Surveying the Public Lands" only.			
Mar. 2, 1895		28:744	176
June 16, 1898		30:473 ch. 458	240
May 17, 1900	1	31:179	179
June 5, 1900	2,3	31:269	188, 217
Jan. 26, 1901		31:740	180
May 22, 1902	2	32:203 ch. 821	187b
June 13, 1902		32:384 ch. 1080	203
April 28, 1904		33:527 ch. 1776	213
April 28, 1904		33:547	224
Feb. 19, 1909		35:639	218
June 17, 1910		36:531 ch. 298	219
Mar. 4, 1913		37:925	256
Last paragraph of section 1 headed "Public Land Service" only.			
April 6, 1914		38:312	167
Aug. 22, 1914		38:704 ch. 270	231
Sept. 5, 1914		38:712	182
Oct. 17, 1914		38:740	168

Oct. 22, 1914		38:766 ch. 335	170
Mar. 4, 1915	1	38:1162	220
July 3, 1916		39:341 ch. 214	232
Aug. 21, 1916		39:518 ch. 361	207, 1075
Dec. 29, 1916	(section 1-9,11)	39:862	291-299 301
Feb. 20, 1917		39:925	215
Dec. 20, 1917		40:430 ch. 6	236
Feb. 25, 1919		40:1161 ch. 37	272a
July 24, 1919 Next to last paragraph only.		41:271	237
Sept. 29, 1919		41:288 ch. 64	233
Feb. 14, 1920		41:434	186
Mar. 1, 1921		41:1193	167
Mar. 1, 1921		41:1202 ch. 102	238, 331
Mar. 4, 1921	1	41:1433 ch. 162	216
April 6, 1922		42:491 ch. 122	273
Mar. 4, 1923		42:1445 ch. 245	222, 302
June 3, 1924		43:357 ch. 240	208

Feb. 25, 1925	43:981 ch. 326	187
June 8, 1926	44:709 ch. 501	177
April 7, 1930	46:144 ch. 108	243
Feb. 23, 1932	47:53 ch. 52	178
Mar. 2, 1932	47:59	237a
May 13, 1932	47:153 ch. 178	256a
Mar. 1, 1933	47:1418 ch. 160	190a

The following words of section 1 only "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homestead be made in said county under the Act of July 4, 1884 (23 Stat. 96: U.S.C., title 43, sec. 190)."

Mar. 3, 1933	47:1424	243a
May 21, 1934	48:787 ch. 320	237b
June 21, 1934	48:1185 ch. 690	187a
May 22, 1935	49:286	237c
Aug. 19, 1935	49:659 ch. 560	237d
Aug. 27, 1935	49:909 ch. 770	256b
April 20, 1936	49:1235 ch. 239	237e

Aug. 28, 1937		50:575	1181c
Sept. 27, 1944		58:747 ch. 421	279-284
June 22, 1948		62:576	209, 210
July 30, 1956		70:715, 716 ch. 778	237 f, g, h 336a-d

2) Exchange of Land:

June 28, 1934	8	48:1272	315g
August 24, 1937		50:748	315p

3) Desert Land Entries:

Mar. 28, 1908		35:52 ch. 112	324, 326, 333
Apr. 30, 1912		37:106 ch. 101	334
Mar. 4, 1915	5	38:1161 ch. 147	335, 337, 338
Feb. 27, 1917		39:946 ch. 134	330
Aug. 7, 1917		40:250	332
Feb. 25, 1925		43:982 ch. 329	336
Mar. 4, 1929		45:1548 ch. 687	339

4) Sale and Disposal Laws:

Revised Statutes 2354, 2355, 2357 2361-2363, 2365 2366, 2368-2372, 2374-2376			673, 674, 676, 678, 668-699

June 15, 1880	34	21:238	679, 680
Mar. 3, 1891	9, 16	26:1099, 1101	671, 728
May 18, 1898		30:418 ch. 344	675
Mar. 1, 1907		34:1052 ch. 2286	682
June 1, 1938		52:609 ch. 317	682a-e

5) Town Site Reservation and Sale:

Revised Statutes			
2380-2384			711-715
2386-2389			717-721
2391-2394			722-724
Mar. 3, 1877	1, 3, 4	19:392 ch. 113	725-727
Feb. 9, 1903		32:820 ch. 531	731
July 9, 1914		38:454	730

6) Drainage Under State Laws:

May 20, 1908	1-7	35:169 ch. 181	1021-1027
Mar. 3, 1919		40:1321 ch. 113	1028
Jan. 17, 1920		41:392 ch. 47	1041-1048
May 1, 1958		72:99	1029-1034

7) Abandoned Military Reservations:

July 5, 1884	5	23:104 ch. 214	1074

Aug. 23, 1894		28:491 ch. 314	1077, 1078, 1081
Feb. 15, 1895		28:664	1080
Feb. 11, 1903		32:822 ch. 543	1079

8) Public Lands in Oklahoma:

May 2, 1890 Last paragraph of section 18 and sections 20-24, 27 only.		26:89-93	1091-1097
May 14, 1890		26:109	1111-1117
Mar. 3, 1891	16, 37	26:1026	1098, 1099
Sept. 1, 1893		28:11	1118
May 11, 1896		29:116	1119
Jan. 18, 1897	1, 2, 3, 7	29:490	1131-1134
Aug. 7, 1946		60:872 ch. 772	1100-1101
Aug. 3, 1955		69:445 ch. 498	1102, 1102a-g

9) Patents for Private Claims:

Revised Statutes 2447-2448			1151, 1152
June 6, 1874	1, 2	18:62 ch. 223	1153, 1154
Jan. 28, 1879		20:274	1155
May 30, 1894		28:84 ch. 87	1156

10) Sales of Isolated Tracts:

Revised Statute 2455, as amended			1171

Feb. 4, 1919		40:1055	1172
May 10, 1920		41:595 ch. 178	1173
Aug. 11, 1921		42:159 ch. 62	1175
May 19, 1926		44:566 ch. 337	1176
Apr. 24, 1928		45:457 ch. 428	1171a
May 23, 1930		46:377 ch. 313	1171b
Feb. 14, 1931		46:1105 ch. 170	1177

11) Evidence of Title:

Revised Statutes 2471-2473			1191-1193

12) Lands in Alaska:

Mar. 3, 1891	11	26:1099	732-738
Mar. 12, 1914 Fourth paragraph of section 1 only.		38:305	
May 25, 1926		44:629	732-738
Feb. 26, 1948		62:35 ch. 72	
Aug. 30, 1949		63:679 ch. 521	
July 24, 1947		61:414 ch. 305	
May 14, 1898		30:413	270-270-17

13) Pittman Act Grants:		
Sept. 22, 1922	42:1012	356
14) Indian Allotments:		25 U.S.C.
Feb. 8, 1887	24:389	334
Feb. 28, 1891	26:795	336

(b) Section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315 f) is revised to read as follows:

> "The Secretary of the Interior is authorized, in his discretion, to examine and classify any lands withdrawn or reserved by Executive Order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive Order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lieu, exchange or land grant, and to open such lands to disposal in accordance with such classification under applicable public-land laws. Such lands shall not be subject to disposition until after the same have been classified and opened to disposal."

(c) The Act of March 3, 1877, as amended (19 Stat. 377, 43 U.S.C. 321, 322, 323, 325, 327-329) is further amended to read as follows:

> "All surplus water over and above water actually appropriated and used by persons on entries made under this Act, together with the water of all lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights."

(d) This Act shall not be construed as repealing any law not listed in this section.

Predator Control

March 3, 1849

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 8, 1972

Dear Mr. [President/Speaker]:

There is enclosed a draft bill "To authorize the Secretary of the Interior to assist the States in controlling damage caused by predatory animals; to establish a program of research concerning the control and conservation of predatory animals; to restrict the use of toxic chemicals as a method of predator control, and for other purposes."

We recommend that this bill, a part of the environmental program announced today by President Nixon, be referred to the appropriate committee for consideration and that it be enacted.

This Department believes strongly that enactment of this legislation will provide much needed redirection of programs for animal damage control consistent with our concern both for environmental quality and the preservation of wildlife. In brief, this draft bill would (1) authorize an expanded Federal program of research concerning the control and conservation of predatory animals; (2) prohibit on Federal lands the field use of chemical toxicants for the purpose of killing predatory animals and of chemical toxicants which cause secondary poisoning effects for the purpose of killing mammals, birds or reptiles, except where such use is essential in emergency situations to the preservation of human health or safety, protection of endangered wildlife species, or prevention of substantial damage to natural resources; (3) authorize Federal grants-in-aid to States for implementation of predator control programs; and (4) repeal in its entirety the Act of March 2, 1931 (7 U.S.C. 426-426(b)), pertaining to the eradication and control of predatory animals.

Predatory animal control has been a vexing problem since the advent of recorded history. Early settlers sought to cope with animal depredation through the provision of bounties for predatory species. Though the precedent for such legislation was established as early as 1630 in Massachusetts, most bounty laws have been repealed. Federal involvement in predatory animal control dates to 1885, and an operational program has been conducted by the Federal Government since 1915. Existing Federal programs are carried out pursuant to the Act of March 2, 1931 (7 U.S.C. 426-426(b)), which directs that we "conduct campaigns for the destruction or control of (predatory) animals." The Bureau of Sport Fisheries and Wildlife has thus provided predatory animal control services on public and private lands in many western States. These services are funded jointly by the Federal Government and interested agencies, public and private, at the State and local levels.

Through the years attitudes toward predatory animal control have changed. We as a people and a Nation are now coming to recognize the ecological significance of all living creatures, including those known as "predators". It is generally acknowledged that while there remain some situations in which wild animals must be controlled or killed to assure human health and safety and to prevent substantial property damage, these situations no longer warrant a Federal program of the size and scope as that contemplated in 1931. It is our conclusion that current predatory animal control programs are inconsistent with the changing scale of social values.

Of particular concern has been the use of nonselective poisons to kill predatory animals. Experience has shown that significant numbers of beneficial animals are vulnerable to the poisons used to control predatory animals. Public opposition to the use of such poisons and to predatory animal control programs in general has prompted two important studies by advisory committees composed of eminent wildlife scientists. The first advisory committee, reporting to the Secretary of the Interior in 1964, concluded that far more animals were being killed than required for effective protection of livestock, agricultural crops, wildlife resources, and human health. It recommended a complete reassessment of Federal goals, policies and field operations and that predatory animals be killed only when absolutely essential to the protection of human health or property.

The second advisory committee, reporting recently to the Secretary of the Interior and the Chairman of the Council on Environmental Quality, has recommended a prohibition against the use of poisons in predatory animal destruction, expanded research to determine the economics and ecology of predator losses, and the establishment of cooperative trapper extension programs to focus on individual offending predators.

Based on the reports of the advisory committees appointed to study the animal damage control problem, the expressions of the public with regard to predatory animal control, and our own analysis of the validity and need for animal damage control, it is the position of this Department that such animal damage control as may prove warranted can be accomplished effectively through State efforts. Since most animal damage control is directed toward resident animals, it follows that the States should be directly involved in animal damage control programs. Our proposed legislation would seek to encourage the States' assumption of this responsibility by authorizing the conduct and dissemination of relevant studies, and the demonstration of predator control methods developed as the result of such research. We have also provided for a three-year program of grants-in-aid to States whose predator control programs meet standards to be established by the Secretary. Grants for implementation of an approved State program would be made in amounts not to exceed 75 percent of costs or $300,000, whichever is less, in the first year, 50 percent of costs or $200,000 in the second year, and 25 percent of costs or $100,000 in the third fiscal year following enactment. No Federal assistance would be available to a State whose program entails the use of chemical toxicants, or whose share of program costs is to be paid from non-appropriated funds. Repeal of the Act of March 2, 1931, would result in cessation of direct Federal participation.

In recognition of growing concern over the use of non-selective poisons for animal damage control, and of the recommendations that such uses be sharply curtailed, section 5 of the draft bill would prohibit the use on all Federal lands of chemical toxicants for the purpose of destroying predatory animals, except when such use is found, in emergency situations, to be essential to the preservation of human health or safety, to the protection of wildlife species which are threatened with extinction, or the prevention of substantial damage to nationally significant natural resources. Violation of this prohibition would be punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

By the enactment and implementation of this legislation, the Congress and the Federal Government will demonstrate a keen awareness of the change in scientific and public opinion which compels a redirection of predator control activity. There is enclosed an environmental impact statement prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

/s/ Rogers C. B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl B. Albert
Speaker of the House of Representatives
Washington, D. C. 20515

Enclosures

A BILL

To authorize the Secretary of the Interior to assist the States in controlling damage caused by predatory animals; to establish a program of research concerning the control and conservation of predatory animals; to restrict the use of toxic chemicals as a method of predator control; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Animal Damage Control Act of 1972".

SECTION 2. For the purpose of this Act --

(a) the term "person" means any individual, organization or association, including any department, agency or instrumentality of the Federal government, a State government or a political subdivision thereof;

(b) the term "State" means the several States of the Union, Puerto Rico, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia, but shall not include any political subdivision of the foregoing entities;

(c) the term "chemical toxicant" means any chemical substance which, when ingested, inhaled, or absorbed, or when applied to, or injected into the body, in relatively small amounts, by its chemical action may cause significant bodily malfunction, injury, illness or death to animals or man;

(d) the term "predatory animal" means any mammal, bird or reptile which habitually preys upon other animals; and

(e) the term "secondary poisoning effect" means the result attributable to a chemical toxicant which, after being ingested, inhaled, or absorbed by or into, or when applied to or injected into a mammal, bird, or reptile, is retained in its tissue, or otherwise retained in such a manner and quantity that the tissue itself or retaining part if thereafter ingested by man or another mammal, bird or reptile, produces the effects set forth in subsection (c) hereof.

(f) the term "field use" means any use of lands not in or immediately adjacent to occupied buildings.

SECTION 3.

(a) In order to assist the States in controlling damage caused by predatory animals, birds and field rodents, and in order to encourage the use by States of predator control methods which are consistent with accepted principles of wildlife management and the maintenance of environmental quality, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to conduct directly or by agreement with qualified agencies or institutions, public and private, a program of research which shall concern the control and conservation of predatory and depredating animals and the abatement of damage caused by such animals.

(b) The program of research authorized by subsection (a) hereof shall include, but need not be limited to (1) the testing of methods used for the control of predator and depredating animals and the abatement of damage caused by such animals; (2) the development of effective methods for predator control and the abatement of damage caused by predatory animals which contribute to the maintenance of environmental quality and which conserve, to the greatest degree possible, the Nation's wildlife resources, including predatory animals; (3) a continuing inventory of the Nation's predatory animals, and the identification of those species which are or may become threatened with extinction; and (4) the development of means by which to disseminate to States the findings of studies conducted pursuant to this section.

(c) The Secretary is authorized to conduct such demonstrations of methods developed pursuant to subsection (b) and to provide such other extension services as may be reasonably requested by the duly authorized wildlife agency of any State.

SECTION 4.

(a) In furtherance of the purposes of this Act, the Secretary is authorized to provide in the three fiscal years following enactment financial assistance to any State which may annually propose to administer a program for the control of predatory animals. To qualify for assistance under this section, any such State program must be found by the Secretary to meet such standards as he may, by regulation, establish; *Provided*, *however*, That the Secretary shall not approve any such State program which entails the field use of chemical toxicants for the purpose of killing predatory animals or the field use of any chemical toxicant which causes any secondary poisoning effect for the purposes of killing other mammals, birds, or reptiles; Provided, further, however, that he may approve a State program which entails such emergency use of chemical toxicants as he may authorize, in each specific case, for the protection of human health or safety; the preservation of one or more wildlife species threatened with extinction or likely within the foreseeable future to become so threatened, or for the prevention of substantial irretrievable damage to nationally significant natural resources.

(b) An annual payment under subsection (a) hereof may be made to any State in such amount as the Secretary may determine; Provided, however, That no such annual payment shall exceed an amount equal to 75 percent in the first year, 50 percent in the second year, or 25 percent in the third year, of the cost of the program approved under subsection (a) hereof; and Provided, further, That no such annual payment to any State shall exceed $300,000 in the first fiscal year following enactment, $200,000 in the second fiscal year following enactment, or $100,000 in the third fiscal year following enactment. No payment otherwise authorized by this section shall be made to a State whose share, in whole or part, of the cost of the program approved under subsection (a) hereof is to be paid from funds not appropriated by its legislature.

(c) There is hereby authorized to be appropriated for the purposes of this section $3,000,000 in fiscal year 1973, $2,000,000 in fiscal year 1974, and $1,000,000 in fiscal year 1975.

SECTION 5.

(a) No person shall (1) make field use of any chemical toxicant on any Federal lands for the purpose of killing predatory animals; or (2) make field use on such lands of any chemical toxicant which causes any secondary poisoning effect for the purpose of killing other mammals, birds, or reptiles; Provided, however, That nothing in this section shall be deemed to affect the administration of lands held in trust for Indians.

(b) Notwithstanding subsection (a) hereof, the head of a Federal department, agency, or establishment may authorize on lands subject to his administrative jurisdiction the emergency field use of a chemical toxicant for the purpose of killing predatory animals or of a chemical toxicant which causes a secondary poisoning effect for the purpose of killing other mammals, birds or reptiles, but only if in each specific case he makes a written finding, following consultation with the Secretaries of the Interior, Agriculture, and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that an emergency exists that cannot be dealt with by means which do not involve use of chemical toxicants, and that such use is essential:

(1) to the protection of human health or safety;

(2) to the preservation of one or more wildlife species threatened with extinction or likely within the foreseeable future to become so threatened; or

(3) to the prevention of substantial irretrievable damage to nationally significant natural resources.

(c) Any person convicted of any violation of this section, or of any regulation promulgated under this Act, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

SECTION 6.

Heads of Federal departments, agencies or establishments are hereby authorized to issue such regulations as may be necessary to carry out the purposes of this Act.

SECTION 7.

There is hereby repealed in its entirety the Act of March 2, 1931 (7 U.S.C. 426-426(b)), pertaining to the eradication and control of predatory and other wild animals.

SECTION 8.

Nothing in this Act shall be construed as superseding or limiting the authorities and responsibilities of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

SECTION 9.

Except as otherwise provided in section 4 hereof, there is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SECTION-BY-SECTION ANALYSIS

Section 1

Short title.

Section 2

Definitions. "Predatory animal" means any mammal, bird, or reptile which habitually preys upon other animals.

Section 3

Authorizes Secretary of the Interior to conduct a program of research concerning control and conservation of predatory animals, including testing and development of new methods, inventory of animals, and demonstrations to States. Secretary also authorized to provide related extension services as requested by State wildlife agency.

Section 4

Establishes three-year program (FY 1973-1975) of grants-in-aid to States for their administration of approved predator control activity. Declining Federal share (75, 50, 25) and payment to single State ($300,000; $200,000; $100,000), whichever is less, intended to accomplish phase-out of direct Federal participation. No grants for a program which entails use of chemical toxicants, except as specified. State's share of program costs must be from appropriated funds. There is authorized to be appropriated for purposes of this section $3 million in FY 1973, $2 million in FY 1974, and $1 million in FY 1975.

Section 5

Prohibits on all Federal lands field use of chemical toxicants for purpose of killing predatory animals and chemical toxicants with secondary poisoning effects for purpose of killing other mammals, birds, or reptiles, except that head of Federal agency may authorize such use in emergency situation, and after appropriate consultation, for (1) preservation of human health or safety, (2) preservation of endangered species, or (3) prevention of substantial, irretrievable damage to nationally significant natural resources. Provides penalty for violation of not more than $10,000, or imprisonment for not more than one year, or both.

Section 6

Authorizes issuance of regulations to carry out purposes of Act.

Section 7

Repeals Act of March 2, 1931, which directs conduct of campaigns for destruction and control of predatory animals.

Section 8

Provides that nothing in Act is intended to supersede authority of Environmental Protection Agency under Federal Insecticide Fungicide, and Rodenticide Act.

Section 9

Except as provided in section 4 for purposes of that section, authorizes appropriation of such sums as may be necessary to carry out purposes of the Act.

EXECUTIVE ORDER 11643

ENVIRONMENTAL SAFEGUARDS ON ACTIVITIES FOR ANIMAL DAMAGE CONTROL ON FEDERAL LANDS

February 8, 1972

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa), it is ordered as follows:

SECTION 1. Policy. It is the policy of the Federal Government to (1) restrict the use on Federal lands of chemical toxicants for the purpose of killing predatory mammals or birds; (2) restrict the use on such lands of chemical toxicants which cause any secondary poisoning effects for the purpose of killing other mammals, birds, or reptiles; and (3) restrict the use of both such types of toxicants in any Federal programs of mammal or bird damage control that may be authorized by law. All such mammal or bird damage control programs shall be conducted in a manner which contributes to the maintenance of environmental quality, and to the conservation and protection, to the greatest degree possible, of the Nation's wildlife resources, including predatory animals.

SEC. 2. Definitions. As used in this order the term:

(a) "Federal lands" means all real property owned by or leased to the Federal Government, excluding (1) lands administered by the Secretary of the Interior pursuant to his trust responsibilities for Indian affairs, and (2) real property located in metropolitan areas.

(b) "Agencies" means the departments, agencies, and establishments of the executive branch of the Federal Government.

(c) "Chemical toxicant" means any chemical substance which, when ingested, inhaled, or absorbed, or when applied to or injected into the body, in relatively small amounts, by its chemical action may cause significant bodily malfunction, injury, illness, or death, to animals or man.

(d) "Predatory mammal or bird" means any mammal or bird which habitually preys upon other animals or birds.

(e) "Secondary poisoning effect" means the result attributable to a chemical toxicant which, after being ingested, inhaled, or absorbed, or when applied to or injected into, a mammal, bird, or reptile, is retained in its tissue, or otherwise retained in such a manner and quantity that the tissue itself or retaining part if thereafter injested by man, mammal, bird, or reptile, produces the effects set forth in paragraph (c) of this section.

(f) "Field use" means use on lands not in, or immediately adjacent to, occupied buildings.

SEC. 3. Restrictions on Use of Chemical Toxicants.

(a) Heads of agencies shall take such action as is necessary to prevent on any Federal lands under their jurisdiction, or in any Federal program of mammal or bird damage control under their jurisdiction:

(1) the field use of any chemical toxicant for the purpose of killing a predatory mammal or bird; or

(2) the field use of any chemical toxicant which causes any secondary poisoning effect for the purpose of killing mammals, birds, or reptiles.

(b) Notwithstanding the provisions of subsection (a) of this section, the head of any agency may authorize the emergency use on Federal lands under his jurisdiction of a chemical toxicant for the purpose of killing predatory mammals or birds, or of a chemical toxicant which causes a secondary poisoning effect for the purpose of killing other mammals, birds, or reptiles, but only if in each specific case he makes a written finding, following consultation with the Secretaries of the Interior, Agriculture, and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that any emergency exists that cannot be dealt with by means which do not involve use of chemical toxicants, and that such use is essential:

(1) to the protection of the health or safety of human life;

(2) to the preservation of one or more wildlife species threatened with extinction, or likely within the foreseeable future to become so threatened; or

(3) to the prevention of substantial irretrievable damage to nationally significant natural resources.

SEC. 4. Rules for Implementation of Order. Heads of agencies shall issue such rules or regulations as may be necessary and appropriate to carry out the provisions and policy of this order.

RICHARD NIXON

The White House
February 8, 1972

Endangered Species

March 3, 1849

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 8, 1972

Dear Mr. [President/Speaker]:

There is enclosed a draft bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes".

We recommend that this bill, a part of the environmental program announced today by President Nixon, be referred to the appropriate committee for consideration, and that it be enacted.

This draft bill, to be cited as the "Endangered Species Conservation Act of 1972", follows closely the precedent established by Congress in 1966 and 1969, when it enacted the first legislation to provide protection for those species of fish and wildlife determined to be threatened with extinction in the United States and abroad. Our draft bill retains those provisions of the Acts of October 15, 1966 (80 Stat. 926) and December 5, 1969 (83 Stat. 275) which laid the foundation for this Department's effort to conserve endangered species, and adds to them the authorities which, as demonstrated by experience, are needed to cope with a continuing decimation of our wildlife resources. It provides authority for a new program to be administered jointly by this Department and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970.

Pursuant to the earlier laws, which have been codified as the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa-668cc; 668cc-1 through 668cc-5), and related Acts, the Secretary has authority to promulgate separate lists of native species threatened with extinction and of foreign species threatened with worldwide extinction; to regulate the interstate transportation of native species taken contrary to State laws; and to restrict the importation of foreign species which he determines to be threatened with worldwide extinction. In addition, the Secretary has exercised authority to acquire endangered species habitat within funding limits established by Congress. The Bureau of Sport Fisheries and Wildlife has made significant progress under existing authorities, and it can be said with assurance that enactment of endangered species legislation was a milestone in the Nation's attempt to preserve its natural environment. There exists no precise measure of our success, due primarily to a lack of technical information. Nearly 400 species are currently listed as endangered, either in the United States or worldwide, and there are examples of species which, though once threatened with extinction, are now thought to have been rescued from ultimate destruction. The threat remains, however, and can be expected to grow in intensity as habitat is converted to human use and the environment despoiled. The Council on Environmental Quality warned in its Second Annual Report (August 1971) that "(f)rom the available evidence, it would appear that populations of many - but by no means all - species of nongame wildlife are declining to some degree".

An important provision of our draft bill addresses the need to identify those species and subspecies which, though not yet threatened with extinction within the meaning of the 1966 legislation, are likely within the foreseeable future to become so threatened. It is far more sound we believe, to take the steps necessary to keep a species or subspecies from becoming endangered than to attempt to save it after having reached that critical point. We propose in section 2(c)(1) of the draft bill to define "endangered" as meaning any species or subspecies which is either threatened with extinction throughout all or a significant portion of its range, or likely within the foreseeable future to become threatened with extinction, due to any of the factors enumerated. Subsection 2(c)(2) would require the appropriate Secretary to designate, in the case of each species or subspecies listed, whether such species or subspecies is either threatened with extinction or likely within the foreseeable future to become so threatened. He would indicate, as well, over what portion of the range of such species either condition exists. We have abandoned as unnecessarily cumbersome the current distinction between "native" and "foreign" species.

To assure protection of all endangered species commensurate with the threat to their continued existence, we propose to prohibit the unauthorized import or export, taking, and interstate transportation by any person subject to the jurisdiction of the United States or any species or subspecies determined to be threatened with extinction. These provisions of section 5(a) are intended to provide a degree of regulation consonant with the Congress' recognition of a national interest in the preservation of endangered species and with our responsibility to the international community for the preservation of species which are threatened worldwide. The United States is now preparing to participate in an international ministerial meeting called for the purpose of seeking an international convention on the conservation of endangered species.

By providing the Secretary with discretionary authority to regulate the import, export, taking and interstate transportation of species or subspecies likely within the foreseeable future to become threatened with extinction (section 5(b)), and by authorizing the delegation to States of authority to regulate the taking of an endangered species in cases where there exists "an active program to manage and protect such endangered species", our bill would allow the adoption of measures most appropriate to the protection of a particular species or subspecies within all or a portion of its range.

In addition to strengthened protection for all animals that are truly endangered, we have proposed the deletion of current ceilings on the acquisition of habitat for endangered species. We have expended nearly all of the $15 million authorized for this purpose. Increasing land prices have made unrealistic the current annual limit of $5 million, and the limit ($2.5 million) on funds available for the acquisition of a single area. Based on our experience with administration of the 1966 and 1969 Acts, we also propose certain refinements of procedural and enforcement provisions. These include provisions that petitions for review of additions to or deletions from the list of endangered species must be accompanied by "substantial evidence", to allow importation at other than designated ports of entry "in the interest of the health or safety of the fish or wildlife", to clarify authority pertaining to warrantless searches and the forfeiture of seized property, and to authorize the suspension of hunting and fishing licenses in addition to other penalties for violations of the Act.

We urge the Congress to take this further step forward for the protection of our diminishing wildlife resources. "(T)he status of the Nation's wildlife is of significance not only for its esthetic, scientific, recreation, or resource values", the Council on Environmental Quality has said, "but also for the role it plays in maintaining environmental quality and for what it indicates about that quality". Enactment of the "Endangered Species Conservation Act of 1972" will contribute not only to the health of endangered wildlife species, but to the well-being of us all.

There is attached an environmental impact statement, as required by section 102(2)(C) of the National Environmental Policy Act. The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

/s/ Rogers C. B. Morton
Secretary of the Interior

Hon. Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Hon. Carl B. Albert
Speaker of the House of
Representatives
Washington, D.C. 20515

Enclosures

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Conservation Act of 1972".

SEC. 2. (a) The Congress finds and declares that one of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermination of some species or subspecies of fish and wildlife; that serious losses in other species of wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico and the Convention of the Nature Protection and Wildlife Preservation in the Western Hemisphere, the International Convention for the Northwest Atlantic Fisheries, the International Convention for the High Seas Fisheries of the North Pacific Ocean, and other international agreements, to conserve and protect, where practicable, the various species of fish and wildlife, including game and nongame migratory birds, that are threatened with extinction; and that the conservation, protection, restoration, and propagation of such species will inure to the benefit of all citizens. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species and subspecies of fish and wildlife, including migratory birds, that are threatened with extinction, or are likely within the foreseeable future to become threatened with extinction.

(b) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to protect species or subspecies of fish and wildlife, including migratory birds, that are threatened with extinction or are likely within the foreseeable future to become threatened with extinction, and, insofar as is practicable and consistent with the primary purposes of such bureaus, agencies, and services, shall utilize their authorities in furtherance of the purpose of this Act.

(c)(1) A species or subspecies of fish and wildlife shall be regarded as an endangered species whenever, in his discretion, the Secretary determines, based on the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, and, in cooperation with the Secretary of State, the country or countries in which such fish and wildlife are normally found or whose citizens harvest the same on the high seas, and to the extent practicable, with interested persons and organizations, and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife, in the judgment of the Secretary, is either presently threatened with extinction or will likely within the foreseeable future become threatened with extinction, throughout all or a significant portion of its range, due to any of the following factors: (i) the destruction, drastic modification, or severe curtailment or the threatened destruction, drastic modification, or severe curtailment of its habitat; or (ii) its overutilization for commercial, sporting, scientific, or educational purposes; or (iii) the effect on it of disease or predation; or (v) the inadequacy of existing regulatory mechanisms; or (v) other natural or man-made factors affecting its continued existence.

(2) After making such determination, the Secretary shall publish in the *Federal Register* and from time to time he may revise, by regulation, a list, by scientific and common name or names of such endangered species, indicating as to each species so listed whether such species is threatened with extinction or is likely within the foreseeable future to become threatened with extinction and, in either case, over what portion of the range of such species this condition exists. The endangered species lists which are effective as of the date of enactment shall be republished to conform to the provisions of this Act; *Provided, however*, that until such republication nothing herein shall be deemed to invalidate such endangered species lists. The provisions of section 553 of Title 5, United States Code, shall apply to any regulation issued under this subsection. The Secretary

shall, upon the petition of an interested person under subsection 553(e) of Title 5, United States Code, also conduct a review of any listed or unlisted species or subspecies of fish or wildlife proposed to be removed from or added to the list, but only when he finds and publishes his finding that, to his satisfaction, such person has presented substantial evidence to warrant such a review.

(d) For the purposes of this Act, the term--

(1) "fish and/or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, products, egg, or offspring thereof, or the dead body or parts thereof;

(2) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands and Guam;

(3) "person" means any individual, firm, corporation, association, or partnership subject to the jurisdiction of the United States;

(4) "take" means to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect or kill;

(5) "Secretary" means the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan No. 4 of 1970;

(6) "import" includes commerce with a foreign country, entry into a foreign trade zone, and transshipment through any portion of the United States without Customs entry.

SEC. 3. (a) The Secretary shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act, as appropriate, to carry out a program in the United States of conserving, protecting, restoring, and propagating those species and subspecies of fish and wildlife that he lists as endangered species pursuant to section 2 of this Act.

(b) In addition to the land acquisition authorities otherwise available to him, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of those species or subspecies of fish and wildlife that he lists as endangered species pursuant to section 2 of this Act.

(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, and propagating those species or subspecies of fish and wildlife, including migratory birds, that he lists as endangered species pursuant to section 2 of this Act.

(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purpose of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize, where practicable, their authorities in furtherance of the purpose of this Act by carrying out programs for the protection of endangered species and by taking such action as may be necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of endangered species.

SEC. 4. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species.

(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, and propagation of endangered species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).

SEC. 5. (a) (1) Notwithstanding any other Act of Congress or regulation issued pursuant thereto, and except as hereinafter provided, any person who--

(i) imports into or exports from the United

States, receives, or causes to be so imported, received, or exported; or

(ii) takes or causes to be taken within the United States, the territorial sea of the United States, or upon the high seas; or

(iii) ships, carries, or receives by any means in interstate commerce, any species or subspecies of fish or wildlife which the Secretary has listed as an endangered species threatened with extinction pursuant to section 2 of this Act, shall be punished in accordance with the provisions of section 7 of this Act.

(2) The prohibitions contained in this section shall not apply to American Indians, Aleuts, or Eskimos who take endangered species for their own consumption or ritual purposes in accordance with a treaty or pursuant to Executive Order or Federal statute.

(3) In order to minimize undue economic hardship to any person importing, exporting, taking, or transporting in interstate commerce any species or subspecies of fish or wildlife which is listed as an endangered species threatened with extinction pursuant to section 2 of this Act under any contract entered into prior to the date or original publication of such listing in the Federal Register, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, may permit such person to import, export, take or transport such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate.

(b) Whenever the Secretary, pursuant to section 2 of this Act, lists a species or subspecies as an endangered species which is likely within the foreseeable future to become threatened with extinction, he shall issue such regulations as he deems necessary or advisable to provide for the conservation, protection, restoration and propagation of such species or subspecies, including regulations subjecting to punishment in accordance with section 7 of this Act any person who --

(1) imports into or exports from the United

States, receives, or causes to be so imported, received, or exported; or

(2) takes or causes to be taken within the United States, the territorial sea of the United States, or upon the high seas; or

(3) ships, carries, or receives by any means in interstate commerce, any such species or subspecies of fish or wildlife likely within the foreseeable future to become threatened with extinction.

SEC. 6. (a) The Secretary may permit, under such terms and conditions as he may prescribe, the importation, taking, or the transportation in interstate commerce of any species or subspecies of fish and wildlife listed as an endangered species threatened with extinction for zoological, educational, and scientific purposes, and for the propagation of such fish and wildlife in captivity for preservation purposes, but only if he finds that such importation, taking, or transportation in interstate commerce will not adversely affect the regenerative capacity of such species in a significant portion of its range or otherwise affect the survival of the wild population of such species.

(b) The Secretary may, by regulation, delegate to a State the authority to regulate the taking by any person of an endangered species when he determines, in his discretion, that such State maintains an active program to manage and protect such endangered species in accordance with criteria issued by the Secretary.

(c) Any action taken by the Secretary under this section shall be subject to his periodic and continual review at no greater than annual intervals. Such review shall include the consideration of comment received from interested persons.

SEC. 7. (a)(1) Any person who violates any provision of section 5 or 6 of this Act or any regulation or permit issued thereunder, or any regulation issued under subsection (d) or (e) of this section, other than a person who commits a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In the case of Guam such actions may be brought in the district court of Guam, in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands, and in the case of American Samoa such actions may be brought in the District Court of the United States for the district of Hawaii and such courts shall have jurisdiction of such actions. In hearing such action, the court shall sustain the Secretary's action if supported by substantial evidence.

(2) Whenever any property is seized pursuant to subsection (c) of this section, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection, any property so seized may be proceeded against in any court of competent jurisdiction and forfeited. Fish or wildlife so forfeited shall be conveyed to the Secretary for disposition by him in such a manner as he deems appropriate. If, with respect to any such property so seized, no compromise forfeiture has been achieved or no action is commenced to obtain the forfeiture of such fish, wildlife, property, or item within 30 days following the completion of proceedings involving an assessment of a civil penalty, such property shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

(b) Any person who knowingly violates any provision of section 5 or 6 of this Act, or any regulation or permit issued thereunder, or any regulation issued under subsection (d) or (e) of this section shall, upon conviction, he fined not more than $10,000 or imprisoned for not more than one year, or both, and any Federal hunting or fishing licenses, permits, or stamps may be revoked or withheld for a period of up to 5 years. Upon conviction, (1) any fish or wildlife seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property seized pursuant to subsection (c) of this section may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. If no conviction results from any such alleged violation, such property so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within 30 days following the final disposition of the case involving such violation, commences proceedings under subsection (a) of this section.

(c)(1) The provisions of sections 5 and 6 of this Act and any regulations or permits issued pursuant thereto, or pursuant to subsection (d) or (e) of this section, shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency.

(2) Any authorized agent of the Department of the Interior, the Department of Commerce, or the Department of the Treasury may, without a warrant, arrest any person who such agent has probable cause to believe is knowingly violating, in his presence or view, section 5 or 6 of this Act, or any regulation or permit issued thereunder, the penalty for which is provided under subsection (b) of this section. An agent who has made an arrest of a person in connection with any such willful violation may search such person at the time of his arrest and seize any property taken, used, or possessed in connection with any such violation.

(3) Any authorized agent of the Department of the Interior or the Department of Commerce or officer of the Customs shall have authority to search and seize without a warrant, as provided by the Customs laws and by the law relating to search and seizure. Said

officer or agent is authorized to execute warrants to search for and seize any property, including, for the purposes of this section, any fish, wildlife, aircraft, boat, or other conveyance, weapon, business records, shipping documents, or other items which have been taken, used, or possessed in connection with the violation of any section, regulation, or permit with respect to which a civil or criminal penalty may be assessed, pursuant to subsection (a) or (b) of this section. The several judges of the courts established under the laws of the United States and the several States, and United States magistrates, may, within their respective jurisdictions, upon proper oath and affirmation showing probable cause, issue warrants and subpoenas under the Federal Rules of Criminal Procedure to enforce subsections (a) and (b) of this section. Any property seized pursuant to this section shall be held by any agent authorized by the Secretary or the Secretary of the Treasury, or by a United States Marshal, pending disposition of proceedings under subsection (a) or (b) of this section; except that either Secretary may, in lieu of holding such property, either (1) permit a bond or other satisfactory surety to be posted, or (2) place the fish or wildlife in the custody of such person as he shall designate. Upon the imposition of a civil or criminal penalty, or a forfeiture, the costs to the Government of transfer, board, and handling, including the cost of investigations at a non-designated port of entry, shall be payable to the account of the Secretary. The owner or consignee of any property so seized shall, as soon as practicable following such seizure, be notified of the fact in accordance with regulations established by the Secretary.

(d) For the purposes of facilitating enforcement of sections 5 and 6 of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the importation of fish and wildlife, other than shellfish and fishery products imported for commercial purposes, into the United States. The importation of such fish or wildlife into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at non-designated ports in the interest of the health or safety of the fish or wildlife. Such regulations may provide other exceptions to such prohibition if the Secretary, in his discretion, deems it appropriate and consistent with the purposes of this subsection.

(e) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the purposes of this Act, and the Secretaries of the Treasury and the Department in which the Coast Guard is operating are authorized to promulgate such regulations as may be appropriate to the exercise of responsibilities under subsection 7(c)(1) of this Act.

SEC. 8. (a) In carrying out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to species or subspecies of fish and wildlife threatened with extinction, to take measures to prevent any fish or wildlife from becoming threatened with extinction, and shall cooperate with such countries in providing technical assistance in developing and carrying out programs to provide such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, and propagation of fish and wildlife. The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices designed to enhance such fish or wildlife and their habitat. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife from becoming threatened with extinction.

(b) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (19 U.S.C. 1306; 21 U.S.C. 101-105, 111-135b, and 612-614) and the Tariff Act of 1930, as amended (section 1306 of Title 19). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

(c) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 1527 of Title 19 relating to the importation of wildlife taken, killed, possessed or exported to the United States in violation of the laws or regulations of a foreign country.

SEC. 9. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows:

> "With the exception of endangered species listed by the Secretary pursuant to section 2 of the Endangered Species Conservation Act of 1972, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715 i(a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction".

(c) Subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383) as amended (16 U.S.C. 715 s(a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction" in the last sentence thereof.

(d) Subsection 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 903), as amended (16 U.S.C. 460 l-9(a)(1)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction".

SEC. 10. (a) Sections 1 through 3 of the Act of October 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C. 668aa-668cc), are hereby repealed in their entirety.

(b) Sections 1 through 6 of the Act of December 5, 1969 (83 Stat. 275-279; 16 U.S.C. 668cc-1 through 668cc-6) are hereby repealed in their entirety.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 2. (a) Restates the declaration of purpose provided in section 1 of the Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa), hereinafter the "1966 Act," eliminating reference to "native" species, adding "or subspecies" following "species," adding "or are likely to become threatened with extinction" following "threatened with extinction," and expanding reference to existing treaties.

(b) Restates parallel declaration of policy in section 1 of the 1966 Act, strengthening mandate to all Federal agencies that they utilize their authorities in furtherance of purposes of the Act.

(c) Defines "endangered species" as any species or subspecies of fish or wildlife determined by the Secretary to be threatened with extinction or likely within the foreseeable future to become threatened with extinction throughout all or a significant portion of its range due to the enumerated factors. This definition supplants those found in section 1 of the 1966 Act and section 3 of the Act of December 5, 1969 (83 Stat. 275; 16 U.S.C. 668cc-3), hereinafter the "1969 Act," making possible the publication of a single list of species or subspecies so defined as "endangered," whether "native" or "foreign," and eliminating the requirement that a listed species be threatened throughout its range. This definition of "endangered species" is intended to make clear that Federal protection shall be afforded to species which are not yet threatened with extinction, but which are likely within the foreseeable future to become threatened with extinction.

The Secretary is required to publish, and from time to time revise, a list of endangered species, indicating whether threatened with extinction or likely within the foreseeable future to become so threatened, to republish existing lists of endangered species in conformance with this Act, and to conduct a review of proposed additions or deletions upon petition by an interested person and presentation of substantial evidence.

(d) Definitions are essentially those of 1966 and

1969 Acts. "Person" is defined primarily for purposes of section 5, and is intended to bring within scope of the prohibitions contained therein all individuals and entities lawfully subject to jurisdiction of the United States. "Secretary" is defined to mean the Secretary of the Interior or the Secretary of Commerce, as may be appropriate, in accordance with Reorganization Plan No. 4 of 1970.

Section 3. (a) and (b) Restate, with conforming amendments, parallel subsections in section 2 of the 1966 Act (16 U.S.C. 668bb).

(c) Authorizes utilization of proceeds from Land and Water Conservation Fund for acquisition of endangered species habitat. Limitations of 1966 Act ($15 million total, $5 million annually, and $2.5 million for any one area) are deleted.

(d) Strengthens parallel provision of 1966 Act pertaining to endangered species programs of other Departments. Deletes expiring authorization for acquisition of certain inholdings.

Section 4. Restates parallel provisions of section 3 of 1966 Act pertaining to cooperation with the States (16 U.S.C. 668cc).

Section 5. (a) Prohibits, except as authorized elsewhere in the bill, the import, export, taking within the United States or upon the high seas, and interstate transportation of endangered species listed as threatened with extinction pursuant to section 2, and provides for punishment in accordance with section 7. The 1969 Act provides only a prohibition against the importation from a foreign country of endangered species.

Exempts from the prohibitions of subsection (a) those American Indians, Aleuts, and Eskimos who take endangered species for personal consumption or ritual purposes pursuant to treaty, Executive Order, or Federal statute.

Restates, with conforming amendments, "economic hardship" provision of section 3 of 1969 Act (16 U.S.C. 668cc-3).

(b) Requires that the Secretary, upon listing an endangered species or subspecies likely within the foreseeable future to become threatened with extinction, issue regulations which may include those prohibitions contained in subsection (a) applicable to species or subspecies which are threatened with extinction.

Section 6. (a) Authorizes the Secretary to permit activity otherwise prohibited by section 5(a) for zoological, educational, and scientific purposes.

(b) Authorizes delegation to a State of authority to regulate taking of an endangered species when Secretary determines that such State had adopted active program to manage and protect such species.

(c) Requires Secretarial review of actions taken under this section.

Section 7. (a) Restates parallel provision of section 4 of 1969 Act (16 U.S.C. 668cc-4), providing civil penalty of not more than $5,000 for each violation of sections 5 or 6 and regulations or permits issued thereunder, except for willful violations, the punishment for which is prescribed by subsection (b).

(b) Restates parallel provision of section 4 of 1969 Act, providing criminal penalty of not more than $10,000 or one year's imprisonment, or both, for willful violation of sections 5 or 6 and regulations or permits issued thereunder. Also authorizes suspension of Federal hunting and fishing licenses, permits, or stamps for a period not to exceed 5 years.

(c) Restates parallel provision of section 4 of 1969 Act, providing for enforcement by the Secretaries of the Interior, Commerce, Treasury, and the Department in which the Coast Guard is operating. Authorizes warrantless search under specified conditions, and permits execution by authorized agents of warrants to seize property used in connection with violations for which a penalty is prescribed by subsections (a) or (b).

(d) Restates parallel provision of section 4 of 1969 Act pertaining to authorized ports of entry, and permits importation at non-designated ports when "in the interest of the health or safety of the fish or wildlife."

(e) Authorizes the promulgation of regulations to carry out the purposes of the Act.

Section 8. (a) Restates parallel provision of section 5 of 1969 Act (16 U.S.C. 668cc-5) pertaining to endangered species programs of foreign countries. Provision for an international ministerial meeting on endangered species has been deleted, as such meeting is scheduled for later this year.

(b) and (c) Restate parallel provisions of section 6 of 1969 Act (16 U.S.C. 668cc-6), pertaining to animal quarantine and tariff laws.

Section 9. Provides conforming amendments to National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; U.S.C. 668dd-668ee), Migratory Bird Conservation Act (45 Stat. 1224; 16 U.S.C. 715), Act of June 15, 1935 (49 Stat. 283; 16 U.S.C. 715s(a)), and the Land and Water Conservation Fund Act of 1965 (78 Stat. 903; 16 U.S.C. 460l-9).

Section 10. Repeals sections 1 through 3 of the 1966 Act and sections 1 through 6 of the 1969 Act, which are replaced by this Act. Sections 1 through 3 of the 1966 Act and sections 1 through 5 of the 1969 Act had been designated by the 1969 Act as the "Endangered Species Conservation Act of 1969."

Big Cypress National Fresh Water Reserve

March 3, 1849

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 4, 1972

Dear Mr. [President/Speaker]:

Enclosed is a draft of a bill "To authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida, and for other purposes."

We recommend that the bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

Evidencing a deep concern and understanding of the conservation problems involved in protecting the Big Cypress area of south Florida, President Nixon on November 23, 1971 stated:

> About 35 miles west of Miami lies the Big Cypress Swamp, a unique ecological preserve of paramount importance to the future of Southern Florida. In order to protect Big Cypress Swamp from private development that would destroy it, and to insure its survival for future generations, it is now essential for the Federal Government to acquire this unique and vital watershed. I will therefore propose legislation to acquire the requisite legal interest in 547,000 acres of the swamp.

The enclosed draft bill would authorize the implementation of plans announced by President Nixon on November 23, 1971.

The bill authorizes the Secretary of the Interior to acquire by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange, lands, waters, and interests therein within an area depicted on a map on file with the National Park Service of this Department. The area to be acquired, consisting of not to exceed 547,000 acres of private land and approximately 37,000 acres of publicly owned land, shall be known as the Big Cypress National Fresh Water Reserve.

The reserve shall be administered by the Secretary of the Interior in accordance with the laws applicable to the National Park System. However, the bill authorizes the Secretary to enter into an agreement with the State of Florida or an appropriate political subdivision thereof, pursuant to which the State or local political subdivision may manage and administer the lands acquired for the reserve for the purpose of protecting the unique natural environment of the Big Cypress area. Any such agreement shall contain provisions to limit or control such uses as motorized access, exploration for and extraction of oil, gas, and other minerals, grazing, draining or constructing works to alter the natural water courses, agriculture, hunting, fishing, and trapping, and new construction of any kind. The bill directs the Secretary to permit hunting, fishing, and trapping within the reserve in accordance with applicable State and Federal laws.

Section 5 of the bill authorizes the appropriation of such sums as may be necessary, but not to exceed $156 million for the acquisition of lands and interests therein. We anticipate the use of proceeds from the Land and Water Conservation Fund to acquire such private property over a 10-year period, with an expenditure of $15.6 million in each of the first 5 years following enactment, and the balance of $78.0 million to be spent during the next 5 years.

Everglades National Park, authorized in 1934, represents one of the most unique ecosystems in the world. The biological values of the park, which include habitat for the continued existence of several endangered species, depend on fresh water supplies. In 1971, an estimated 1,420,000 people will visit Everglades National Park.

In the past, the eastern half of the park was threatened due to development along the Shark River drainage, and by development and draining of the Northern wetlands which lie east and south of Lake Okeechobee. This threat has been offset by guarantees of water flow by the Corps of Engineers and the State of Florida. There is now a working arrangement with the Corps and the State which furnishes an optimum water supply to the eastern side of the park. All of the remainder of the park, considerably more than half of the 1,400,533 acres within the authorized boundaries, is dependent upon the Big Cypress for its supply of fresh water.

To describe the resources of the Big Cypress and its basis in the South Florida ecosystem, is to answer the question of why it should be protected.

Aside from its manifold benefits as one of the vital underpinnings of the ecosystems which provide critically important esthetic and economic benefits for much of the southern Florida Gulf Coast, Big Cypress is a highly significant resource in itself. The larger ecosystem of which it is a part is the Nation's only significant subtropical marsh community complex.

The Big Cypress is an intricate mosaic of marsh and lowland forest types--a wilderness of sloughs, tree islands (or hammocks), and bay and cypress heads. Cypress dominates, and gives the area its name.

A vital factor in the Big Cypress-Everglades ecosystem is the almost imperceptible slope of the land. This results in exceedingly slow drainage, which extends the "wet months" well beyond the period of actual rainfall. The unrelieved flatness of the area's topography makes sheet flow the predominant drainage rather than flow in well-defined channels or courses. Thus, a water level change of only a few inches ofttimes affects thousands of acres. Much of those areas still experiencing natural drainage stands under water for as long as 4 months after rainfall ceases in a year of normal rainfall. During the normal dry season, about one-tenth of the land remains inundated.

The Big Cypress Watershed serves as a natural water storage area, and supplements the man-made storage areas in conservation areas one, two, and three, that are considered vital for the protection of an adequate fresh water supply for south Florida.

Nowhere outside the tropics are epiphytes, or "air-plants", which include orchids, some ferns, and fromeliads, found in such abundance and variety as they are in Big Cypress. Seven species of orchids found nowhere else in the world grow in the Big Cypress, and because of depredation by orchid hunters can be classed as endangered flora.

Large portions of Big Cypress have so far experienced little man-made disturbance. The scars left by the early loggers have nearly healed. Nearly all the wildlife species native of semitropical Florida are contained within the watershed. Animal life is diverse and abundant. Large, showy, long-legged wading birds are a major natural attraction. Big Cypress provides important feeding, nesting and wintering areas, as well as a resting place for birds migrating to and from Central and South America. Acquisition of the Big Cypress Swamp would preserve important habitat for at least nine species of wildlife determined by the Secretary of the Interior to be threatened with extinction. Ultimate loss or mismangement of the area would be most damaging to the endangered Cape Sable sparrow and the peripheral roseate spoonbill, reddish egret, and mangrove cockoo. To another group of species that have far wider ranges, Big Cypress, along with the adjacent Everglades National Park, serves as a stronghold or retreat. This group includes the endangered American alligator, Florida panther, Florida Everglade kite, and Southern bald eagle, and the rare great white heron. The Big Cypress provides excellent hunting for deer, turkey, quail, and wild hog.

As stated earlier, Everglades National Park is utterly dependent upon a plentiful supply of high quality water flowing through the region in an overland sheet pattern for up to 8 or 9 months of the year.

A major portion of its water supply comes from rainfall over the park itself. The remainder historically comes from Lake Okeechobee drainage system and from Big Cypress Watershed, the latter accounting for about 56 percent of all outside water entering the park.

Because of the extremely slight elevation differences in the park's terrain, the effects of dessication and inundation resulting from seasonal changes in water levels are extraordinarily widespread. Only the alligator holes and ponds retain water throughout the natural annual cycle.

The summer wet period normally inundates extensive areas, allowing expansion of the aquatic populations--phytoplankton, crustaceans and fishes. Subsequently, water levels must sink to concentrate the summer production of food organisms sufficiently to supply the nourishment essential to larger fishes, amphibians, reptiles, mammals and many species of birds.

The seasonal wet-dry cycle must coincide with the natural reproductive cycles of the many varieties of predatory animals that feed upon the small aquatic organisms supported by the water. If any of the links in this process are broken, the reproduction of the larger animals at the top of the food chain will fail. Either excessively high or low water can cause reproductive failure. So can too short a delivery period.

The coastal zone within the influence of the Big Cypress Watershed contains about one-third of the total mongrove-estuarine complex of Everglades National Park. Levels of productivity and diversity of species as high as any to be found within the United States characterize the coastal zone. In addition to its very large bird population, the area produces or maintains hundreds of species of aquatic organisms. The mangrove forest is considered among the finest in the world.

Following acquisition of the land the bill contemplates that the Secretary of the Interior will enter into an agreement with the State of Florida for the management of the area. Existing uses where compatible with the management objectives will be allowed to continue. Management would be directed toward maintaining the pattern, quantity and quality of waterflow. Hunting and fishing are present, acceptable uses but limitations will have to be placed on travel through the swamp by air boats, swamp buggies, and other "all terrain vehicles" to insure against rutting, and other impairment of the area. Increased use should result from campers, bird watchers, naturalists, and picnickers. Many will seek escape into near-tractless wilderness-type areas over hiking nature trails. Some portions would be managed as scientific ecological study areas.

Acquisition of the Big Cypress will be expensive--a monumental commitment in terms of funds for environmental protection--but at no time in the future will it be less so. As President Nixon stated on November 23, 1971--

> The Nation, as a whole, will benefit through the protection of Everglades National Park and through the addition of another major wildlife haven and recreational area.

We therefore urge the Congress to take early and favorable action to authorize the Big Cypress National Fresh Water Reserve, as proposed herein.

Enclosed is a draft of an environmental impact statement, prepared in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969.

The Office of Management and Budget has advised that the enactment of the enclosed bill would be in accord with the Administration's program.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl B. Albert
Speaker of the House of Representatives
Washington, D. C. 20515

Enclosures

A BILL

To authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds--

(a) the unique natural environment of the Big Cypress area of southwestern Florida should be protected from further development which would significantly and adversely affect its ecology;

(b) the Big Cypress is a fragile area, ecologically interlocked with Everglades National Park and the continued viability of Everglades National Park and certain of the estuarine fisheries of south Florida are directly dependent upon fresh water of adequate quality and volume from the Big Cypress area; and

(c) appropriate measures must be taken by the United States and the State of Florida to assure the conservation of fresh water from the Big Cypress area.

It is, accordingly, the purpose of this Act to provide for the protection of the Big Cypress area and for appropriate uses thereof through cooperative action by the Federal Government and the State of Florida.

SECTION 2.

In order to effectuate the purpose of this Act the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange, lands, waters, and interests therein within the area generally depicted on the map entitled "Boundary Map, Big Cypress National Fresh Water Reserve, Florida", numbered BC-91,001, and dated November 1971, which shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The Secretary may from time to time make minor revisions in the boundaries of the area by publication of a revised map or other boundary description in the *Federal Register*, and he may acquire property within the revised boundaries in accordance with the provisions of this section: *Provided*, That the boundaries of the area may not encompass more than 547,000 acres of privately owned land. Property owned by the State of Florida or any political subdivision there of may be acquired only by donation. Notwithstanding any other provision of law, Federal property within the boundaries of the area may, with the concurrence of the head of the administering agency, be transferred to thd administrative jurisdiction of the Secretary for the purposes of this Act, without a transfer of funds.

SECTION 3.

(a) The owner of improved property on the date of its acquisition by the Secretary may, as a condition of such acquisition, retain for himself and his heirs and assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term of not more than twenty-five years or, in lieu thereof, for a term ending at the death of the owner or the death of his spouse, whichever is later. The owner shall elect the term to be reserved. Unless this property is wholly or partially donated to the United States, the Secretary shall pay the owner the fair market value of the property on the date of acquisition less the fair market value on that date of the right retained by the owner. A right retained pursuant to this section shall be subject to termination by the Secretary upon his determination that it is being exercised in a manner inconsistent with the purposes of this Act, and it shall terminate by operation of law upon the Secretary's notifying the holder of the right of such determination and tendering to him an amount equal to the fair market value of that portion of the right which remains unexpired.

(b) As used in this Act the term "improved property" means a detached, one-family dwelling, construction of which was begun before November 23, 1971, which is used for noncommercial residential purposes, together with not to exceed three acres of the land on which the dwelling is situated, such land being in the same ownership as the dwelling, together with any structures accessory to the dwelling which are situated on such land.

SECTION 4.

The area within the boundaries depicted on the map referred to in section 2, or as such boundaries may be revised, shall be known as the Big Cypress National Fresh Water Reserve, and it shall be administered by the Secretary in accordance with the laws applicable to the National Park System, and in a manner consistent with the findings and purposes of this Act. The Secretary is authorized to enter into an agreement with the State of Florida, or any political subdivision thereof having jurisdiction over the lands, waters, and interests therein within the reserve, pursuant to which such State or political subdivision may agree to manage and administer any property acquired by the Secretary pursuant to this Act for the purpose of protecting the unique natural environment of the Big Cypress area. Any such agreement shall contain provisions which, as applied to the area within the reserve, will limit or control the use of the lands and waters therein for the purposes of motorized access, exploration for and extraction of oil, gas, and other minerals, grazing, draining or constructing works to alter the natural water courses, agriculture, hunting, fishing, and trapping, new construction of any kind, and such other uses as the Secretary determines must be limited or controlled in order to carry out the purpose of this Act; Provided, however, that the Secretary shall consult and cooperate with the Secretary of Transportation to assure that necessary transportation facilities shall be located within existing or reasonably expanded rights-of-way and constructed within the reserve in a manner consistent with the purposes of this Act.

SECTION 5.

The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the reserve in accordance with the applicable laws of the United States and the State of Florida, except that he may designate zones where and periods when no hunting, fishing, or trapping may be permitted for reasons of public safety, administration, fish or wildlife management, or public use and enjoyment. Except in emergencies, any regulations prescribing such restrictions shall be put into effect only after consultation with the appropriate State agency having jurisdiction over hunting, fishing, and trapping activities. Notwithstanding this section or any other provision of this Act, the Secretary may authorize members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida to continue their usual and customary use and occupancy of Federal lands and waters within the reserve, including hunting, fishing and trapping on a subsistence basis and traditional tribal ceremonials.

SECTION 6.

Notwithstanding any other provision of law, before entering into any contract for the provision of revenue-producing visitor services, the Secretary shall provide those members of the Miccosukee and Seminole Indian Tribes who on January 1, 1972, were engaged in the provision of similar services, a reasonable opportunity to continue providing such services within the reserve in accordance with such terms and conditions as he may by agreement, hereby authorized, provide.

SECTION 7.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, but not to exceed $156,000,000 for the acquisition of lands and interests therein.

SECTION-BY-SECTION ANALYSIS

Section 1
Congressional finding that unique natural environment of Big Cypress area warrants protection through cooperative action by Federal government and State of Florida.

Section 2
Authorizes Secretary of the Interior to acquire by donation, purchase, transfer or exchange interests in lands and waters not to exceed 547,000 acres of private lands, as depicted on boundary map BC-91-001.

Section 3
Permits owners of improved property acquired by the Secretary to retain use and occupancy thereof for a definite term of not more than 25 years, or for a term ending at the death of the owner or his spouse, which ever is later. Provides for compensation equal to fair market value at time of acquisition, less the fair market value of right retained by owner.

Section 4
Designates area within boundary described in section 2 as "Big Cypress National Fresh Water Reserve," and provides for administration thereof by the Secretary of the Interior in accordance with laws applicable to the National Park System. Authorizes execution of agreements for State or local management and administration of areas within Reserve, provided that such agreements contain provision for protection of natural resources, and provided, further, that Secretary shall consult with Secretary of Transportation as to location of transportation facilities within the Reserve.

Section 5
Requires that Secretary permit hunting, fishing and trapping within the Reserve in accordance with applicable laws of United States and State of Florida, but authorizes the prohibition of such activity under specified circumstances. Permits continuation of customary use and occupancy of Federal lands by Miccosukee and Seminole Indians.

Section 6
Provides that Miccosukee and Seminole Indians shall have reasonable opportunity, under agreement with the Secretary, to continue provision of those revenue-

producing visitor services in which they may have been engaged on January 1, 1972.

Section 7

Authorizes appropriation of such sums as may be necessary to carry out provisions of Act, not to exceed $156 million for acquisition of lands and interests therein.

Golden Gate National Recreation Area

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 8, 1972

Dear Mr. [President/Speaker]:

There is enclosed a draft bill "To provide for the establishment of the Golden Gate National Recreation Area in the State of California and for other purposes."

We recommend that the bill, a part of the environmental program announced today by President Nixon, be referred to the appropriate committee for consideration, and we recommend that it be enacted.

As President Nixon has pointed out, "The demand for urban open space, recreation, wilderness and other natural areas continues to accelerate. In the face of rapid urban development, the acquisition and development of open space, recreation lands and natural areas accessible to urban centers is often thwarted by escalating land values and development pressures".

On May 10, 1971, this Department, in furtherance of the President's objective to provide parks in urban areas, proposed legislation to establish the Gateway National Recreation Area in New York and New Jersey. The Golden Gate National Recreation Area in California, as proposed in the enclosed draft bill, is yet another significant step which we recommend be taken toward this high goal.

In 1960, the population of the San Francisco-Oakland standard metropolitan statistical area was approximately 2,500,000. In one decade the population has almost doubled, totaling more than 4,500,000 at present, and in 1990 it will measure more than 7,500,000. While the City and County of San Francisco, Marin County, and the State of California have all provided some open space, the potential for park and recreation development of a much greater acreage should be realized in order to meet the demonstrated need for recreation space.

The boundaries of our proposed Golden Gate National Recreation Area would encompass some 24,000 acres of existing State and County parkland with undeveloped military reservations and private lands into an area offering a variety of outdoor recreation uses.

The boundaries of the national recreation area will extend from the southern boundary of Point Reyes National Seashore southward approximately 22 miles along the Pacific Ocean to the north end of Golden Gate Bridge. Across the Bridge, it will extend from the existing San Francisco Maritime State Historic Park on the east to Fort Point on the west, and from Fort Point westward and southward along the Pacific Ocean about nine miles to include Fort Funston at the southern end. In San Francisco Bay itself, Angel Island and Alcatraz would comprise the third major component of the national recreation area.

The area on the north side of the Golden Gate, which will connect with the Point Reyes National Seashore, is largely undeveloped rugged open land suitable for camping, hiking, fishing, and nature study. It consists of 7,472 acres of State parkland, 2,067 acres of Federally owned land, 198 acres of county land, and 8,021 acres of privately owned land.

On the south side of the Golden Gate is heavily used urban parkland, including Fort Mason, Gashouse Cove, Crissy Field, and Marine Green. The Sutro Seaside area will provide water-oriented recreation, and the Ocean Dunes will be protected and administered for hiking and swimming. Alcatraz Island's chief uses will feature its historic role and its unique location as a vantage point from which to view activities in San Francisco Bay.

Though adjacent to Golden Gate National Recreation Area, Fort Point already designated as a national historic site by the Act of October 16, 1970 (84 Stat. 970), and Muir Woods National Monument, established by

Presidential Proclamation No. 793 on January 9, 1908, will retain their identity as separate units of the National Park System.

Land ownership for the proposed Golden Gate National Recreation Area is approximately as follows:

Federal		3,618 acres
Army	3,384 acres	
Air Force	12 acres	
Coast Guard	222 acres	
State		11,337 acres*
County (Marin)		198 acres
Private		8,021 acres
	Total	23,174 acres

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* Of this acreage, 3,840 acres is submerged land.

Under the bill, those Federal lands which now comprise Forts Cronkhite, Barry and the western portion of Fort Baker, together with other nearby Federal lands, would be transferred to the administrative jurisdiction of the Secretary of the Interior, subject to continued use and occupancy of certain areas by the Department of the Army for a period sufficient to allow relocation of essential military and support facilities. Those areas within the Presidio of San Francisco known as Baker Beach and Crissy Army Airfield would be made available for public use as units of the recreation area, subject only to continued use of the airfield during a phase-out period. All other Federal land within the Presidio, the eastern portion of Fort Baker, and Coast Guard property not subject to immediate transfer would be transferred to the Secretary of the Interior as it is determined to be excess of military or operational requirements. This proposed transition from military to recreation use of the historic property adjacent to Golden Gate Bridge takes into account the essential nature of some existing military activities, while providing an immediate, and significant increase in the number of acres available for public recreation.

We propose that State-owned lands within the recreation area be managed by the State of California in a manner compatible with Federal administration of adjoining areas, and that there be no transfer of State property to the administrative jurisdiction of the Secretary at this time. Section 2(a) of our draft bill does provide, however, for acquisition, development and administration of such State lands as may later be donated for this purpose, and Section 3(a) authorizes the Secretary to enter into such agreements with the State of California as may "contribute to uniform management and public use of all publicly owned lands within the recreation area". The 8,021 acres of private land would be acquired, and, where appropriate, leased back to permit continued compatible uses pursuant to the authority in the Act of July 15, 1968 (82 Stat. 354), except that we do not propose to acquire the Audubon Society property (61.48 acres) so long as present compatible uses are continued. Although not specifically provided for, life estates or estates for a term of years, could under provisions of the bill, be permitted in appropriate instances. In addition, scenic easements or other less-than-fee interest can be acquired where appropriate.

Estimated costs for development of the recreation area are approximately $58,000,000. The estimated development cost is based on May 1971 prices, and section 5 of the bill relates the appropriation limitation for development to cost indices as of that date.

Land costs are estimated to be $27,620,000, which is programmed over a three-year period. This estimate includes the cost of acquisition of twenty-one improvements as well as the cost of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Real property taxes on the private lands to be acquired totaled $235,321 in 1970. Annual operation and maintenance is expected to cost $1,354,832 the first year, and will increase to about $2,126,039 during the fifth year. A man-year and cost data statement is attached.

The Office of Management and Budget has advised that enactment of this legislative proposal would be in accord with the program of the President.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl B. Albert
Speaker of the House of Representatives
Washington, D.C. 20515

Enclosures

A BILL

To provide for the establishment of the Golden Gate National Recreation Area in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to preserve and protect for the use and enjoyment of present and future generations an area possessing outstanding natural, historical, and recreational features, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to establish the Golden Gate National Recreation Area (hereinafter referred to as the "recreation area"). There shall be included within the boundaries of the recreation area those properties in the San Francisco Bay area generally depicted on the map entitled "Boundary Map, Golden Gate National Recreation Area, San Francisco and Marin Counties, California", numbered NRAGG-20,000C and dated January 1972, which map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary shall establish the recreation area by publication of a notice to that effect in the Federal Register at such time as he determines that lands, waters, and interests therein sufficient to constitute an efficiently administrable recreation area have been acquired for administration in accordance with the purposes of this Act. The Secretary may from time to time make corrections in the boundaries of the recreation area, but the total area within the boundaries shall not exceed 24,000 acres.

SECTION 2.

(a) The Secretary may acquire lands and waters and interests therein within the boundaries of the recreation area by donation, purchase with donated or appropriated funds, or exchange, except that property or interests therein owned by the State of California or any political subdivision thereof may be acquired only by donation, subject to such terms and conditions as may be mutually agreed to and subject to such valid existing rights as may exist under the laws of such State or political subdivision at the time of donation, provided, however, that the Secretary may acquire, develop and administer property or interests therein which the State of California or any political subdivision thereof may have retained a reversionary interest. Except as hereinafter provided, Federal property within the boundaries of the recreation area is hereby transferred to the administrative jurisdiction of the Secretary for the purposes of this Act, subject to the continuation of such existing uses as may be agreed upon between the Secretary and the head of the agency formerly having jurisdiction over the property. Notwithstanding any other provision of law, the Secretary may develop and administer for the purposes of this Act structures or other improvements and facilities on lands for which he receives a permit of use and occupancy from the Secretary of the Army.

(b) The Federal property known as Fort Cronkhite, Fort Barry, and approximately one-half of the Federal property known as Fort Baker, together with certain additional Federal property located in Marin and San Francisco Counties, California, all as depicted on the map entitled "Golden Gate Military Properties" numbered NRAGG 20,002 and dated January 1972 is hereby transferred to the administrative jurisdiction of the Secretary for purposes of this Act, provided, however, that the Secretary shall grant: (1) a permit for continued use and occupancy by the Secretary of the Army for those portions of said property necessary for existing air defense missions until the Secretary of Defense determines that such requirements no longer exist, and (2) a permit for continued use and occupancy by the Secretary of the Army for those portions of said property for essential missions to include reserve activities and family housing for a period of 10 years or for such longer period of time as may be agreed upon by the Secretary; and provided further, that the portion of said Federal property known as Coast Guard Radio Receiver Station, Fort Cronkhite, comprising approximately 12.4 acres, shall remain under the administrative jurisdiction of the Secretary of the Department in which the Coast Guard is operating until such time as all or any portion thereof is determined by the Department in which the Coast Guard is operating to be excess to its needs, at which time such excess portion shall be transferred to the administrative jurisdiction of the Secretary for purposes of this Act.

(c) That portion of the Federal property known as Fort Baker not subject to transfer under the provisions of subsection (b) hereof shall remain under administrative jurisdiction of the Department of the Army until such time as all or any portion thereof is determined by the Department of Defense to be excess to its needs, at which time such excess portion shall be transferred to the administrative jurisdiction of the Secretary for purposes of this Act; provided, however, that the Secretary of the Army shall grant to the Secretary such rights as are necessary to assure reasonable public access through such area to Horeshoe Bay, together with the right to construct and maintain such public service facilities as the Secretary deems necessary for the purposes of this Act. The precise facilities and location thereof shall be determined between the Secretary and the Secretary of the Army.

(d) Upon enactment, the Secretary of the Army shall grant to the Secretary irrevocable use and occupancy of that Federal property within the Presidio of San Francisco known as Baker Beach consisting of approximately 100 acres, and as depicted on said map numbered NRAGG 20,002.

(e) Within ten years from the date of enactment, or such longer period of time as may be agreed upon by the Secretary, the Secretary of the Army shall grant to the Secretary irrevocable use and occupancy of that Federal property within the Presidio of San Francisco known as Crissy Army Airfield, consisting of approximately 45 acres, and as depicted on said map numbered NRAGG 20,002.

(f) That portion of the Federal property known as the Presidio of San Francisco not subject to the provisions of subsections (d) and (e) hereof shall remain under the administrative jurisdiction of the Department of the Army until such time as all or any portion thereof is determined by the Department of Defense to be excess to its needs, at which time such excess portion shall be transferred to the administrative jurisdiction of the Secretary for purposes of this Act. If the portion of said Federal property known as Fort Point Coast Guard Station, comprising approximately 14.7 acres, is still in continued use by the Coast Guard at the time that property is declared by the Department of Defense to be excess to its needs, the Secretary shall grant a permit for continued use and occupancy by the Secretary of the Department in which the Coast Guard is operating for that portion of said Fort Point Coast Guard Station necessary for activities of the Coast Guard.

(g) That portion of Fort Miley comprising approximately 1.7 acres of land presently used and required by the Secretary of the Navy for its inshore, underseas warfare installations shall remain under the administrative jurisdiction of the Department of the Navy until such time as all or any portion thereof is determined by the Department of Defense to be excess to its needs, at which time such excess portion shall be transferred to the administrative jurisdiction of the Secretary for purposes of this Act.

(h) New construction and development within the recreation area on property remaining under the administrative jurisdiction of the Department of the Army and not subject to the provisions of subsections (d) or (e) hereof shall be limited to that which is required to accommodate facilities being relocated from property being transferred under this Act to the administrative jurisdiction of the Secretary or which is directly related to the essential missions of the Sixth United States Army; provided, however, that any construction on presently undeveloped open space may be undertaken only after prior consultation with the Secretary. The foregoing limitation on construction and development shall not apply to expansion of those facilities known as Letterman General Hospital or the Western Medical Institute of Research.

(i) The Federal property known as Point Bonita, Point Diablo, and Lime Point shall remain under the administrative jurisdiction of the Secretary of the Department in which the Coast Guard is operating until such time as all or any portion thereof is determined by the Department in which the Coast Guard is operating to be excess to its needs, at which time such excess portion shall be transferred to the administrative jurisdiction of the Secretary for purposes of this Act. The Secretary of the Department in which the Coast Guard is operating may continue to maintain and operate existing navigational aids provided that access to such navigational aids and the installation of necessary new navigational aids within the recreation area shall be undertaken in accordance with plans which are mutually acceptable to the Secretary and the Secretary of the

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Department in which the Coast Guard is operating and which are consistent with both the purposes of this Act and the purpose of existing statutes dealing with establishment, maintenance, and operation of navigational aids.

SECTION 3.

(a) Prior to the establishment of the recreation area and thereafter, the Secretary shall administer the lands, waters and interests therein acquired for the recreation area in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1,2-4), as amended and supplemented, except that the Secretary may utilize such statutory authority available to him for the conservation and management of wildlife and natural resources as he deems appropriate to carry out the purposes of this Act. Notwithstanding their proximity to the boundaries of the recreation area, the Muir Woods National Monument and Fort Point National Historic Site shall continue to be administered as separate units of the National Park System in accordance with the laws applicable to such monument and historic site. The Secretary is authorized to enter into agreements, subject to otherwise applicable Federal, State or local statutes, with the State of California or its political subdivisions with respect to any State and other publicly owned lands within the recreation area in order to contribute to uniform management and public use of all publicly owned lands within the recreation area.

(b) Notwithstanding any other provision of law, the Secretary may provide such services and facilities as he deems necessary or desirable for access to the recreation area. The Secretary may provide such services and facilities directly, or by negotiated contract with public or private agencies or persons without advertising and without securing competitive bids.

(c) The Secretary is authorized to enter into cooperative agreements with Federal agencies, the State of California, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, fire-fighting, law enforcement, water and sewer and other community services.

SECTION 4.

The authority of the Secretary of the Army to undertake or contribute to water resource developments, including shore erosion control, beach protection, and navigation improvements on land and/or waters within the Golden Gate National Recreation Area in California shall be exercised in accordance with plans which are mutually acceptable to the Secretary and the Secretary of the Army and which are consistent with both the purpose of this Act and the purpose of existing statutes dealing with water and related land resource development.

SECTION 5.

There are hereby authorized to be appropriated not more than $27,620,000 for acquisition of lands and interests in lands, and not to exceed $58,000,000 (May 1971 prices) for development of the recreation area, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved herein.

Conversion of Federal Properties to Parks

CONVERSION OF FEDERAL PROPERTIES TO PARKS

Soon after taking office, the President established the Federal Property Review Board to identify unneeded Federal lands and dispose of them, with preference to be given to donation to State and local governmental bodies for public use. As part of the Legacy of Parks program announced in the 1971 Environmental Message, the Board was directed to give priority to areas with potential for park and recreation use. One hundred and fifty-one prospective areas with such open space values have been identified, and 63 of these were converted to park use over the past 2 years. In addition, in his 1972 Environmental Message, the President announced that 20 more parcels were being made available. The total of 83 parcels comprises 14,585 acres in 31 States and Puerto Rico. Their estimated fair market value is over $56 million. Many are located within or near urban areas, where they are readily accessible to densely populated neighborhoods.

The President's Proposal

The 20 newly identified properties include all or portions of the following: the Alvord Estate, Phoenix, Arizona; Camp Elliott, San Diego, California; San Luis Obispo, California; Outer Marker Annex, Palm Beach, Florida; Gap Filler Annex, Winter Garden, Florida; Boca Grande Light Station, Gasparilla Island, Florida; Panama City Jetties, St. Andrews Bay, Florida; Federal Correctional Institute, Tallahassee, Florida; Crooked River Light, Carabelle, Florida; Dinner Key Air Station, Miami, Florida; Veterans Administration Hospital, Topeka, Kansas; Veterans Administration Center Reservation, Leavenworth, Kansas; Veterans Administration Hospital, Bedford, Massachusetts; Federal Correctional Institute, Milan, Michigan; Chillicothe Station, Ross County, Ohio; Former Naval Air Station, Tillamook County, Oregon; Roosevelt Roads, Puerto Rico; Fort Hood, Killeen, Texas; Veterans Administration Hospital, Waco, Texas; and Fort Douglas, Salt Lake City, Utah.

Preservation of Wilderness Areas

PRESERVATION OF WILDERNESS AREAS

The Wilderness Act of 1964 established procedures for the identification and protection of Federally owned lands of unique natural value under a system of wilderness areas. The Act itself established 54 such areas, and 35 were subsequently added, totaling more than 10 million acres.

In his 1971 Wilderness Message, the President endorsed all 13 areas proposed to the Congress by the previous Administration and proposed 14 new areas. Subsequently, four other areas were proposed by the Administration. Two of these 31 proposed areas have been designated as wilderness by the Congress; the remaining 29, comprising several million acres, remain under Congressional consideration.

The President's Proposal

In his 1972 Message on the Environment, the President proposed 18 new areas, which would add another 1.3 million acres to the wilderness system. Eight are within National Forests, four are within National Parks, and six are within National Wildlife Refuges. The proposals and their acreages are as follows: Weminuche Area, in the San Juan and Rio Grande National Forests, Colorado, 346,833 acres; Eagles Nest Area, in the Arapahoe and White River National Forests, Colorado, 87,755 acres; Emigrant Area, in the Stanislaus National Forest, California, 105,376 acres; Agua Tibia Area, in the Cleveland National Forest, California, 11,920 acres; Mission Mountains Area, in the Flat Head National Forest, Montana, 73,207 acres; Glacier Area, in the Shoshone National Forest, Wyoming, 182,510 acres; Blue Range Area, in the Apache National Forest, Arizona and New Mexico, 177,239 acres; Aldo Leopold Area, in the Gila National Forest, New Mexico, 188,095 acres; part of the St. Marks National Wildlife Refuge, Florida, 17,746 acres; part of the Wolf Island National Wildlife Refuge, Georgia, 4,168 acres; part of the Moosehorn National Wildlife Refuge, Maine, 4,598 acres; part of the San Juan Islands National Wildlife Refuge, Washington, 355 acres; part of the Cape Romaine National Wildlife Refuge, South Carolina, 28,000 acres; part of the

Bosque del Apa National Wildlife Refuge, New Mexico, 32,500 acres; part of the Bryce Canyon National Park, Utah, 16,303 acres; part of the Black Canyon National Monument, Colorado, 8,780 acres; part of the Colorado National Monument, Colorado, 7,700 acres; and part of the Chiricahua National Park, Arizona, 6,925 acres. The total is 1,300,510 acres.

As part of his 1972 Message, the President also directed the Secretaries of Agriculture and the Interior to accelerate the identification of areas in the Eastern United States having wilderness potential, in order to increase the opportunities for wilderness experience within the regions where most of our people live.

Off-Road Vehicles

EXECUTIVE ORDER 11644
USE OF OFF-ROAD VEHICLES ON THE PUBLIC LANDS
February 8, 1972

An estimated 5 million off-road recreational vehicles - motorcycles, minibikes, trail bikes, snowmobiles, dunebuggies, all-terrain vehicles, and others - are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands - often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity - has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), it is hereby ordered as follows:

SECTION 1. PURPOSE.

It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

SECTION 2. DEFINITIONS.

As used in this order, the term:

(1) "public lands" means (A) all lands under the custody and control of the Secretary of the Interior and the Secretary of Agriculture, except Indian lands, (B) lands under the custody and control of the Tennessee Valley Authority that are situated in western Kentucky and Tennessee and are designated as "Land Between the Lakes," and (C) lands under the custody and control of the Secretary of Defense;

(2) "respective agency head" means the Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, and the Board of Directors of the Tennessee Valley Authority, with respect to public lands under the custody and control of each;

(3) "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or

immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any military, fire, emergency, or law enforcement vehicle when used for emergency purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and

(4) "official use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

SECTION 3. ZONES OF USE.

(a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following -

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of

the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

(b) The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.

(c) The limitations on off-road vehicle use imposed under this section shall not apply to official use.

SECTION 4. OPERATING CONDITIONS.

Each respective agency head shall develop and publish, within one year of the date of this order, regulations prescribing operating conditions for off-road vehicles on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

SECTION 5. PUBLIC INFORMATION.

The respective agency head shall ensure that areas and trails where off-road vehicle use is permitted are well marked and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use. He shall seek cooperation of relevant State agencies in the dissemination of this information.

SECTION 6. ENFORCEMENT.

The respective agency head shall, where authorized by law, prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations. To the extent permitted by law, he may enter into agreements with State or local governmental agencies for cooperative enforcement of laws and regulations relating to off-road vehicle use.

SECTION 7. CONSULTATION.

Before issuing the regulations or administrative instructions required by this order or designating areas or trails as required by this order and those regulations and administrative instructions, the Secretary of the Interior shall, as appropriate, consult with the Atomic Energy Commission.

SECTION 8. MONITORING OF EFFECTS AND REVIEW.

(a) The respective agency head shall monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designations of areas or other actions taken pursuant to this order as necessary to further the policy of this order.

(b) The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.

RICHARD NIXON

The White House
February 8, 1972

United Nations Fund
for the Environment

UNITED NATIONS FUND FOR THE ENVIRONMENT

The United Nations Conference on the Human Environment, to be held in Stockholm, Sweden, in June of this year, will mark an important forward step in cooperative international efforts to deal with environmental degradation in all parts of the world.

Many aspects of international environmental problems will be examined at the Conference, particularly problems that are inherently international, such as monitoring and reducing pollutants in the earth's oceans and atmosphere and dealing with the international trade effects of national pollution control programs. The Conference should lead to needed international arrangements for environmental protection programs and for coordination of efforts among existing international organizations.

The President's Proposal

In order to help provide the United Nations with increased capabilities for environmental protection activities following the Stockholm Conference, the President has proposed that a voluntary United Nations Fund for the Environment be established, with an initial funding goal of $100 million for the first five years.

As programs are undertaken, member nations may decide that additional resources are required. If such a Fund is established, the President will recommend to the Congress that the United States commit itself to provide its fair share of the fund over the 5-year period. The President has invited other nations to join the United States in this commitment to meaningful action.

New machinery will be required within the United Nations to accordinate ongoing environmental activities and to administer the Fund. The Stockholm Conference could make a recommendation as to the nature of such machinery to the United Nations General Assembly for adoption at its 27th session in the fall of 1972.

Marine Pollution

MARINE POLLUTION

The general public is well aware of the sudden and substantial threats to marine life and shorelands that may be posed by spills of oil and hazardous substances from vessels at sea. Less dramatic, but no less important, are the thousands of smaller spills and discharges of oil and the dumping into the oceans of materials ranging from small amounts of toxic substances to sewage sludge from municipalities. Unilateral national action alone is inadequate to deal effectively with these problems, whether their cause is accidental or intentional. A substantial beginning has been made internationally, largely through the Inter-Governmental Maritime Consultative Organization (IMCO), but further actions are needed, such as ratification and implementation of several conventions.

Limitations on discharge of oil into ocean waters, which occurs during such normal tanker operations as cleaning oily ballast tanks at sea, have been provided since 1954 through the IMCO Oil Pollution Convention of that year. The terms of this Convention have been strengthened periodically as technology has developed and as increased tanker trade in oil has intensified the intentional discharge problem.

IMCO has adopted three separate amendments to the 1954 Oil Pollution Convention. The 1969 amendments would tighten considerably the limitations on intentional discharges. These amendments would require tankers to use careful load-on-top procedures in handling dirty ballast. One of the 1971 amendments would extend the flat no-discharge limitation afforded coastal areas under the 1954 Convention, as amended previously, to Australia's Great Barrier Reef. Another set of 1971 amendments to the 1954 Convention would establish tank size limitations and construction requirements in order to minimize damage to the marine environment from oil spills in the event of tanker collision or grounding.

Two additional conventions, the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of a Fund for Compensation of Oil Pollution Damage, would provide compensation to victims damaged by oil spills. The 1969 Civil Liability Convention would place strict liability on the vessel owner up to a fixed limit. The 1971 Compensation Fund Convention, to be supported by contributions from oil cargo receivers, would more than double the amounts available for compensating victims under the 1969 Convention, would considerably expand its coverage, and would condition the operation of provisions benefiting shipowners on their compliance with pollution prevention standards. Finally, the 1969 Convetion Relating to Intervention on the High Seas establishes a nation's right to take such measures on the high seas as are necessary to ameliorate danger to its territory and territorial seas from pollution, actual or threatened, arising from a marine casualty.

On September 20, 1971, at the President's request, the Senate gave its advice and consent to the 1969 Intervention Convention and to the 1969 amendments to the 1954 Oil Pollution Convention.

The President's Proposals

Besides seeking final adoption of the pending "first round" of marine pollution conventions and amendments, the United States is actively promoting a second and more sophisticated round of agreements in this area. In November 1970, Secretary of Transportation Volpe proposed to NATO's Committee on the Challenges of Modern Society (CCMS) that NATO nations achieve by 1975, or at least by the end of the decade, a complete halt to intentional discharge of oil and oily wastes by vessels. This proposal was adopted by CCMS and was then put on the agenda for action by IMCO. Presently we are preparing for a 1973 IMCO conference to draft the convention barring intentional discharges to the sea of oil and hazardous substances from ships.

Marine pollution has also been a top priority item in the preparatory work for the 1972 U.N. Conference on the Human Environment. At the first preparatory working group session on marine pollution, the U.S. tabled a draft convention on ocean dumping of shore-generated wastes. Work on a dumping convention draft continues, with the next negotiating session scheduled for Reykavik, Iceland, in April. The draft may not be sufficiently developed for final adoption at the 1972 U.N. Conference. In that event, IMCO has scheduled working sessions to conclude the effort.

In conjunction with the Law of the Sea Conference scheduled for 1973, we are examining measures to control the effects of developing undersea resources. In August 1970, the U.S. introduced in the U.N. Seabed Committee a Draft United Nations Convention on the International Seabed Area. This draft would establish an international authority called the International Seabed Resource Authority, which would control the effects of seabed development and deal with such matters as creation of international marine parks and preserves.

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